

Preliminary Land Use Service (PLUS) Application
Municipal Comprehensive Plans
Pre-update review request

Delaware State Planning Coordination

122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

Please complete this “PLUS application in its entirety. **All questions must be answered. If a question is unknown at this time or not applicable, please explain.** Unanswered questions on this form could lead to delays in scheduling your review. This form will enable the state staff to review the project before the scheduled meeting and to have beneficial information available for the applicant and/or developer at the time of review. If you need assistance or clarification, please call the State Planning Office at (302) 739-3090. Possible resources for completing the required information are as follows:

www.state.de.us/planning
www.dnrec.state.de.us/dnrec2000/
www.dnrec.state.de.us/DNRECeis/
datamil.delaware.gov
www.state.de.us/deptagri/

Link to currently certified comprehensive plan:

<http://stateplanning.delaware.gov/municipal/elsmere.shtml>

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Name of Municipality: Town of Elsmere	
Address: 11 Poplar Avenue Elsmere, DE 19805	Contact Person: John S. Giles Jr.
	Phone Number: (302) 998-2215
	Fax Number: (302) 998-9920
	E-mail Address: jgiles@townofelsmere.com

Plan certification date: August 12, 2004

The municipality requests that the enclosed plan be reviewed to provide suggestions for revisions and improvements. The review is also to notify the municipality of any code changes since the certification of this plan that should be included in the scheduled update.

Information prepared by: Town of Elsmere	
Address: 11 Poplar Avenue Elsmere, DE 19805	Contact Person: John S. Giles Jr.
	Phone Number: (302) 998-2215
	Fax Number: (302) 998-9920
	E-mail Address: jgiles@townofelsmere.com

Maps Prepared by: University of Delaware Institute for Public Administration	
Address: University of Delaware IPA 180 Graham Hall Newark, DE 19716-7380	Contact Person: Martin Wollaston
	Phone Number: (302) 831-4930
	Fax Number: (302) 831-4934
	E-mail Address: martinw@udel.edu

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General Plan Approval Process

- Step 1:** Draft prepared by local government.
- Step 2:** Planning Commission and/or Legislative Body approves draft plan to send to PLUS.
- Step 3:** PLUS meeting, application submitted by 1st business day of the month for that month's meeting.
- Step 4:** State comments submitted to local government within 20 business days of meeting.
- Step 5:** Local government replies to state comments in writing and submits revised plan (if necessary) to the Office of State Planning Coordination (O S P C) for review.
- Step 6:** OSPC requires 20 working days to reply to revised plan. State sends a letter accepting changes or noting discussion items or if no changes are necessary see step 7.
- Step 7:** Certification letter will be sent within 10 business days of final submission to OSPC.
- Step 8:** The local jurisdiction shall adopt the plan as final following certification. Plan is effective on the date of adoption.
- Step 9:** A copy of the final document and written notification of adoption is to be sent to OSPC.

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Comprehensive Plan / Amendment Checklist¹

Please check yes or no as to whether the following information has or has not been included in the comprehensive plan and indicate page numbers where information may be found.

Public Participation	Yes	No	Page # / Sections
Public Participation Summary and Results	X		1-8

Population Data and Analysis	Yes	No	Page #
Past Population Trends	X		25
Population Projections	X		25
Demographics	X		26
Position on Population Growth		X	

Housing	Yes	No	Page #
Housing Stock Inventory	X		31
Housing Pipeline	X		34
Housing Needs Analysis	X		34
Position on Housing Growth	X		35
Affordable Housing Plan	X		35

Annexation	Yes	No	Page #
Analysis of Surrounding Land Uses	X		79
Annexation Plan		X	

Redevelopment Potential	Yes	No	Page #
Identification of Redevelopment Areas and Issues	X		74
Redevelopment Strategy	X		75
Community Development Strategy	X		77

¹ Please go to the following website for detailed checklist information:
<http://www.state.de.us/planning/services/circuit.shtml>.

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Community Character	Yes	No	Page #
History of the Town or City	X		13
Physical Conditions	X		13
Significant Natural Features	X		14
Community Character	X		16
Historic and Cultural Resources Plan	X		16
Community Design Plan	X		18
Environmental Protection Plan	X		20

Land Use Plan	Yes	No	Page #
Existing Land Use	X		69
Land Use Plan	X		71

Critical Community Development and Infrastructure Issues	Yes	No	Page #
Review of Community Conditions			
Inventory of Community Infrastructure	X		42
Inventory and Analysis of Community Services	X		45
Water and Wastewater Plan	X		51
Transportation Plan	X		55
Community Development Plan	X		47
Community Facilities Plan	X		48

Intergovernmental Coordination	Yes	No	Page #
Description of Intergovernmental Relationships	X		80
Intergovernmental Coordination Strategy	X		80
Analysis and Comparison of Other Relevant Planning Documents	X		80

Economic Conditions	Yes	No	Page #
Economic Base / Major Employers	X		57
Labor Market	X		60
Income and Poverty	X		62
Economic Development Plan	X		64

Open Space and Recreation	Yes	No	Page #
Inventory of Open Space and Recreation Facilities	X		37
Open Space and Recreation Plan	X		40

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Implementation Strategies	Yes	No	Page #
Evaluation of Current Codes and Ordinances	X		82
Zoning Map Revisions	X		82
Zoning and Subdivision Code Revisions	X		82
Implementation Plan		X	
Coordination with Other Government Agencies	X		82

Other State Programs, Policies, and Issues	Yes	No	Page #
Total Maximum Daily Loads	X		20
Corridor Capacity Preservation Program		X	
Agricultural Preservation Program		X	
Sourcewater Protection		X	

Additional Comments: See Page 7

Summary:

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The following items have been included in this application package.

1. An electronic copy of the Town's Comprehensive Plan. There have been no changes to the plan since its adoption.
2. Electronic copies of the following annual reports.
 - a. March 07, 2007 report.
 - b. December 05, 2007 report
3. Electronic copies of ordinances enacted in order to implement recommendations and requirements of the current plan or which will have an effect on the upcoming plan revision.
 - a. Town Ordinance # 439.
 - b. Town Ordinance # 451.
 - c. Town Ordinance # 459.
 - d. Town Ordinance # 461.
 - e. Town Ordinance # 462.
 - f. Town Ordinance # 468.
 - g. Town Ordinance # 469.
 - h. Town Ordinance # 488.
 - i. Pending Town Ordinance # 488.
4. An electronic copy of the Town's Livable Delaware Assistance application for funding.
5. An electronic copy of the Town's 2008-2009 Comprehensive Plan Review Scope of Work.

ORDINANCE 439

AN ORDINANCE AMENDING CHAPTER 225 OF THE CODE OF THE TOWN OF ELSMERE BY REQUIRING ALL MATTERS FOR CONSIDERATION BY THE BOARD OF ADJUSTMENTS TO FIRST BE REVIEWED BY THE PLANNING COMMISSION

WHEREAS, The Mayor and Council desire to insure that all matters which are being considered by the Board of Adjustments of the Town of Elsmere, have first been reviewed by the Planning Commission of the Town of Elsmere. and;

WHEREAS, The Mayor and Council desire that the Planning Commission make a recommendation to the Board of Adjustments concerning all matters which the board will consider.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

That Chapter 225-40 (B.) "Meetings", be amended by adding a new (5) to read as follows.

225-40 (B) (5):

No issue before the Board of Adjustments for consideration shall be considered or acted upon by the board unless such issue has been reviewed by the Planning Commission and the Planning Commission has issued a recommendation as to what action the Board of Adjustments should take when considering issue.

September 16, 2004
First and Second Reading

October 13, 2004
Third and Final Reading

Richard Herold, Mayor

Thomas S. Novak, Jr., Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

FOR ORDINANCE 439

This ordinance requires all matters being considered by the Board of Adjustments to first be reviewed by the Planning Commission and also requires the Planning Commission to make a recommendation to the Board concerning the issue.

ORDINANCE 451

AN ORDINANCE AMENDING CHAPTER 225 OF THE CODE OF THE TOWN OF ELSMERE BY UPDATING THE ZONING CODE OF THE TOWN OF ELSMERE

WHEREAS, The Town of Elsmere completed an updated of its Comprehensive Plan on August 12, 2004; and

WHEREAS, Delaware Law requires municipalities who update their Comprehensive Plans to review and modify their existing Zoning Code to insure it is consistent with the changes made to their Comprehensive Plan; and

WHEREAS, Delaware Law requires that this review of the Zoning Code occur within eighteen months of the adoption of a updated Plan; and

WHEREAS, The Planning Commission has reviewed the Zoning Code and recommended to the Mayor and Council, that a number of changes be made to the existing code.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

That Chapter 225 of the Code of the Town of Elsmere is amended as follows.

1. That Chapter 225 as it now exists is hereby deleted in its entirety.
2. That a new Chapter 225 (which is attached to this ordinance) be inserted in its place.

First and Second Reading

11/10/2005

Third and Final Reading

Richard Herold, Mayor

Joann I. Personti., Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

THIS ORDINANCE REVISES THE EXISTING CHAPTER 225 OF THE CODE OF THE TOWN OF ELSMERE TO ENSURE THAT THE ZONING CODE IS CONSISTANT WITH THE COMPREHENSIVE PLAN ADOPTED BY THE TOWN OF ELSMERE ON AUGUST 12, 2004.

Chapter 225

ZONING

[HISTORY: Adopted by the Mayor and Council of the Town of Elsmere 6-14-1973 by Ord. No. 111. Amendments noted where applicable.]

GENERAL REFERENCES

Planning Commission — See Ch. 38.
Building construction — See Ch. 76.
Notification of lessees in floodplains — See Ch. 103.
Satellite dish antennas — See Ch. 184.
Subdivision and land development — See Ch. 196.

ARTICLE I

Purpose; Scope; Interpretation; Short Title

§ 225-1. Purpose.

These regulations were made in accordance with a Comprehensive Plan and were designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements. These regulations were made with reasonable consideration as to the characters of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

§ 225-2. Scope.

From and after the effective date of this chapter, the use of all land and every building or portion of a building erected, altered with respect to height and area, added to or relocated and every use within a building or use accessory thereto, in the Town of Elsmere shall be in conformity with the provisions of this chapter. Any existing building or structure and any existing use of a building or land not in conformity with the regulations herein prescribed shall be regarded as nonconforming but may be continued, extended or changed subject to the special regulations herein provided with respect to nonconforming buildings or uses.

§ 225-3. Interpretation. [Amended 12-15-1976 by Ord. No. 124]

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare. Where the provisions of this chapter impose greater restrictions than those of any law, other ordinance or regulation, the provisions of this chapter shall be controlling. Where the provisions of any law, other ordinance or regulation impose greater restrictions than this chapter, the provisions of such law, other ordinance or regulation shall be controlling, provided

that in all cases arising within the Floodplain District the laws and ordinances concerning land use and control and other measures designed to reduce flood losses shall take precedence over any conflicting law, ordinance or code.

§ 225-4. Short title.

These regulations and the accompanying map shall be known and may be cited as the "Town of Elsmere Zoning Ordinance."

§ 225-5. Definitions.

Unless otherwise expressly stated, the following words and phrases shall be construed throughout this chapter to have the meanings herein indicated:

ACCESSORY BUILDING — A building subordinate to the main building on a lot and used for purposes customarily incidental to those of the main building.

ACCESSORY USE — A use subordinate to the main use of land or of a building on a lot and customarily incidental thereto.

ACRE — An area of land which includes 43,560 square feet.

ADULT BOOKSTORE or ADULT VIDEO STORE — A commercial establishment which as its primary business purpose offers for sale or rental for any form of consideration any one or more of the following: [Added 9-8-1977 by Ord. No. 130; amended 12-8-1992 by Ord. No. 292]

- A. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical area; or
- B. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

ADULT ENTERTAINMENT CENTER — An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified anatomical areas (as defined below), for observation by patrons therein. [Added 9-8-1977 by Ord. No. 130]

ALTERATIONS — As applied to a building or a structure, a change or rearrangement in the structural parts in the existing facilities or an enlargement whether by extension of a side or by increasing in height or by moves from one location or position to another.

BASE FLOOD (ONE-HUNDRED-YEAR FLOOD) — The flood having a one-percent chance of being equaled or exceeded in any given year. [Added 1-13-1977 by Ord. No. 124]

BASEMENT — A story partly underground and having more than 1/2 of its clear ceiling height above the average level of the adjoining ground.

BASEMENT (DEFINE FOR FLOODPLAIN) — In the Floodplain District, any

area of the building having its floor subgrade (below ground level) on all sides. [Added 12-12-1996 by Ord. No. 331]

BILLBOARD — Any sign used to identify or advertise the product made or the activity being pursued by any individual business, service, commercial or industrial enterprise and for the purpose of apprising the public of the location of such enterprise and/or the type of activity in which it is engaged.

BOARD OF ADJUSTMENT — The officially established Board of Adjustment of the Town of Elsmere.

BUFFER ZONE — A zone lying between two others, designed to separate the two. The buffer zone shall have no other use. [Added 9-10-1987 by Ord. No. 214]

BUILDING

A. "Building" shall be defined as follows:

- (1) **DETACHED** — A building which has no party walls.
- (2) **SEMIDETACHED** — A building which has one party wall in common with an adjacent buildings.
- (3) **ATTACHED** — A building which has two party walls in common with adjacent buildings.

B. For the purposes of this chapter, this definition shall also include tents, lunch wagons, trailers, mobile homes, camp cars or other structures on wheels.

C. See "structure." [Added 1-13-1977 by Ord. No. 124]

BUILDING AREA — The aggregate of the maximum horizontal cross-section areas, excluding cornices, eaves and gutters, of all buildings on a lot.

BUILDING HEIGHT — The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of the ceiling of the top story of a flat roof, to the deckline of a mansard roof and to the average height between the plate and ridge of a gable, hip or gambrel roof.

BUILDING LINE — The line parallel to the street line at a distance therefrom equal to the depth of the front yard required for the district in which the lot is located, except that in the case of a rear lot, the building line shall be located to the rear of the rear property line of the front lot, not less than the depth of the required front yard.

BUILDING, PRIMARY — A buildings or buildings, in which is conducted the main or principal use of the lot on which said building is situated.

BUSINESS OFFICE — A business establishment which does not offer a product or merchandise for sale to the public but offers a service to the public. However, personal services, such as barber- and beauty shops and repair shops, such as radio and television repair shops, are not to be included within the definition of business services.

CAMPER TRAILERS — A folding structure, mounted on wheels and designed for travel, recreation and vacation use.

CELLAR — A story partly underground and having more than 1/2 of its clear ceiling height below the average level of the adjoining ground.

CERTIFICATE OF OCCUPANCY — A certificate issued by the Building Official upon completion of construction, alteration or change in occupancy of a building. Said certificate shall acknowledge compliance with all requirements of this chapter, such adjustment thereto granted by the Board of Adjustment and that the building was constructed in accordance with the plans and specifications filed with the Building Official and meets all other applicable Town regulations.

CHURCH — A building or group of buildings including customary secondary buildings designed or intended for public worship. For the purpose of this chapter, the word "church" shall include chapels, congregations, cathedrals, temples and similar designations as well as rectories, parish houses, convents and such accessory uses.

CURB LEVEL — The officially established grade of the curb in front of the midpoint of the lot or in the absence of an officially established curb level, the mean level of any existing curb or of the lot at the street line.

DECK — An exterior floor system supported on at least two opposing sides by an adjoining structure and/or posts, piers, or other independent supports, which is located in other than a front yard, and is not enclosed or covered. [Added 7-11-2002 by Ord. No. 406]

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials. [Added 1-13-1977 by Ord. No. 124; amended 12-12-1996 by Ord. No. 331]

DISPLAY — To locate an item in such a manner that, without obtaining assistance from an employee of the business establishment, it is available to the general public for handling and inspection; or the cover or outside package on the item is visible to members of the general public. [Added 12-8-1992 by Ord. No. 292]

DWELLING

- A. **SINGLE-FAMILY** — A building, on a lot, designed and occupied exclusively as a residence for one family.
- B. **TWO-FAMILY** — A building, on a lot, designed and occupied exclusively as a residence for two families.
- C. **MULTIPLE** — A buildings on a lot, designed and occupied exclusively as a residence for three or more families.

ELECTRIC SUBSTATION — An assemblage of equipment for purposes other than generation or utilization, through which electric energy in bulk is passed for the purposes of switching or modifying its characteristics to meet the needs of the

general public, provided that in residence districts an electric substation shall not include rotating equipment, storage of materials, trucks or repair facilities or housing of repair crews.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before December 31, 1976. [Added 1-13-1977 by Ord. No. 124; amended 12-12-1996 by Ord. No. 331]

FAMILY — One or more persons, related by blood or marriage, occupying a dwelling unit and living as a single nonprofit housekeeping unit.

FARM BUILDING — Any building used for storing agricultural equipment or farm produce, housing livestock and poultry and processing dairy products. The term "farm building" shall not include dwellings.

FLOOD or FLOODING [Added 10-22-1991 by Ord. No. 276]

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
- (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
 - (3) Mudslides (i.e., mudflows) which are approximately caused by flooding as defined herein and are akin to a river of liquid and flowing mud on the surfaces of earth which is carried by a current of water and deposited along the path of the current.
- B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined herein.

FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents. [Added 10-22-1991 by Ord. No. 276; amended 12-12-1996 by Ord. No. 331]

FLOODWAY — The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point. [Added 12-12-1996 by Ord. No. 331]

FLOOR AREA, GROSS — The sum of the horizontal areas of the floor or floors of

a building which are enclosed and usable for human occupancy. Said areas shall be measured from the inside face of exterior walls or from the center line of walls separating two dwelling units. Said areas shall not include areas below the average level of the adjoining ground, garage space or accessory building space.

FRONT LINE — A line parallel to the street, tangent only to the furthestmost projection of the building's facade.

GARDEN APARTMENT DEVELOPMENT — A building or group of buildings designed to accommodate more than one dwelling unit within a single structure and which is designed so that the group of dwelling units utilize such common facilities as pedestrian walks, parking and garage areas, open space, recreation areas and utility and service facilities.

GOLF COURSE — An area of 50 or more contiguous acres containing a full size golf links, at least nine holes totaling a minimum of 2,700 yards from tee to green, together with such necessary and usual accessory uses as a clubhouse, caretakers' dwellings, dining and refreshment facilities and other such uses, provided that the operation of such facilities is incidental and subordinate to the operation of a golf course.

HARMFUL TO MINORS — The quality of any description or representation, in whatever form, of nudity, sexual contact, sexual excitement or sadomasochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of minors; is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors and is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for any reasonable minor. [Added 12-8-1992 by Ord. No. 292]

HISTORIC STRUCTURE — Any structure that is: [Added 10-22-1991 by Ord. No. 276]

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior;
or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or

- (2) Directly by the Secretary of the Interior in states without approved programs.

HOME OCCUPATIONS — An occupation or profession which:

- A. Is carried on in a dwelling unit, building or other structure accessory to a dwelling unit;
- B. Is carried on by a member of the family residing in the dwelling unit;
- C. Is clearly incidental and secondary to the use of the dwelling for residential purposes; and
- D. Conforms to the following additional conditions:
 - (1) The occupation or profession shall be carried on wholly within the principal building or within a building or structure accessory thereto and already existing on the premises.
 - (2) Not more than one person outside the immediate family is employed.
 - (3) There is no exterior evidence of the home occupation other than a nameplate sign that conforms to the Sign Ordinance.¹
 - (4) No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced.

JUNKYARD — Any area and/or structure used or intended to be used for the conducting and operating of the business of selling, buying, storing or trading in used or discarded metal, glass, paper, cordage or any used or disabled fixtures, vehicles or equipment of any kind.

LOT — A parcel of land on which a main building and any accessory buildings are or may be placed, together with the required open spaces. The area of a lot which abuts a street shall be measured to the street line only. In the case of a rear lot, the computed area of a lot shall not include the accessway from the front lot line to the street.

LOT, CORNER — A parcel of land at the junction of and fronting on two or more intersecting streets.

LOT COVERAGE — That percentage of the lot area which is devoted to building area.

LOT WIDTH — The horizontal distance between the side lot lines, measured between the points on the side lot lines at which they are intersected by the rear line of the required front yard area, said line being the required setback line.

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not

¹. Editor's Note: See Art. VII, Sign Regulations, of this chapter.

considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements. [Added 10-22-1991 by Ord. No. 276; amended 5-30-1996 by Ord. No. 326]

MANUFACTURED HOME — Any structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION — Any parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. [Added 7-9-1987 by Ord. No. 212]

MEAN SEA LEVEL — The average height of the sea for all stages of the tide.²³ [Added 1-13-1977 by Ord. No. 124]

MOTOR VEHICLE SERVICE ESTABLISHMENT — A building or use which is designed or intended to be used for the storage, servicing, repair, maintenance or cleaning of motor vehicles or other automotive equipment.

NET LOT AREA — The area of a lot remaining after deduction of all easements (streets, accessways, sidewalks, etc.).

NEW CONSTRUCTION — Structures for which the start of construction as herein defined commenced on or after December 31, 1976, and includes subsequent improvements to such structure. [Added 1-13-1977 by Ord. No. 124; amended 12-12-1996 by Ord. No. 331]

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots in which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after December 31, 1976. [Added 1-13-1977 by Ord. No. 124; amended 12-12-1996 by Ord. No. 331]

NONCONFORMING BUILDING OR USE or NONCONFORMING LOT — The lawful use of a building or structure or the lawful use of any land, as existing and lawful at the time of the enactment of a zoning regulation or, in the case of a change of regulations, then at the time of such change, may be continued although such use does not conform to the provisions of such regulations or change, and such use may be extended throughout the same building, provided that no structural alteration of such building is proposed or made for the purpose of such extension. [Amended 5-30-1996 by Ord. No. 326]

2. Editor's Note: The definition of "mobile home," as amended (subsequently amended to refer to "manufactured home"), which previously followed this definition, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

3. Editor's Note: The definition of "mobile home park," which previously followed this definition, was repealed 12-12-1996 by Ord. No. 331.

ONE-HUNDRED-YEAR FLOOD or BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year. [Added 10-22-1991 by Ord. No. 276]

OPEN SPACE — An unoccupied space open to the sky on the same lot with a principal and/or accessory building.

PARKING SPACE — An open space or a garage, on a lot, used for parking motor vehicles, the area of which is not less than 200 square feet and to which there is access from a street or alley.

PERSON — Any individual or group of individuals, corporation, partnership, association or other entity, including state and local governments and agencies. [Added 12-12-1996 by Ord. No. 331]

PLANNED UNIT DEVELOPMENT — A development of 40 contiguous acres, which provides housing at varying densities and of various types and necessary commercial, recreational and community facilities. [Amended 5-30-1996 by Ord. No. 326]

PLANNING COMMISSION — The Planning Commission of the Town of Elsmere.

PRIMARY USE — The main or principal activity taking place or intended to take place in a building or on a lot.

PRINCIPALLY ABOVE GROUND — Where at least 51% of the actual cash value of a structure, less ground land, is above ground. [Added 12-12-1996 by Ord. No. 331]

PRIVATE GARAGE — An accessory building used for the storage of any number of motor vehicles owned and used by the owner or tenant of the premises and for the storage of not more than two motor vehicles owned and used by persons other than the owner or tenant of the premises.

PUBLIC GARAGE — A building, not a private garage, used for the storage, repair or servicing of motor vehicles of any type of ownership.

RECREATIONAL VEHICLE — A vehicle which is: [Added 12-12-1996 by Ord. No. 331]

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light-duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated

height. [Added 10-22-1991 by Ord. No. 276]

RESIDENTIAL DENSITY, GROSS — The total number of dwelling units which may be or are developed on an area of land, before requirements for public access and required open spaces are provided.

RESIDENTIAL DENSITY, NET — The resulting number of dwelling units which may be or are developed on a site or lot after public access and required open spaces are provided.

RESIDENTIAL PROFESSIONAL OFFICE — A professional office when conducted on residential property and shall be limited to those of the practice of medicine, law, dentistry, architecture and engineering. The conduct of such profession shall permit the employment of not more than one employee and shall be limited to 1/4 of the total floor area of the buildings.

RESTAURANT — Any establishment, however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar at a public or a community playground, playfield, park or swimming club operated solely by the agency or group operating the recreational facilities and for the sole use of the patrons of the facility shall not be deemed to be a restaurant.

RESTAURANT, DRIVE-IN — An establishment where patrons are served soft drinks, ice cream and other food products for consumption outside the confines of the principal building or in automobiles parked on the premises, regardless of whether or not, in addition thereto, seats or other accommodations are provided for the patrons.

ROOM — As applied to garden apartment developments, a "room" shall be defined as a living room, dining room, kitchen and/or bedroom. A kitchenette, which does not include space for eating and a dining area of which one full wall is open into a living room shall be counted as 1/2 room. A bathroom shall not count as a room.

SIGN — Any device, structure or object for visual communication that is used for the purpose of bringing the subject thereof to the attention of others, but not including any flag, badge or insignia of any public, quasi-public, civic, charitable or religious groups.

SIGN AREA — The area defined by the edge or frame of a sign. Where there is no geometric edge of frame of the sign, the area shall be defined by a projected, enclosed, four-side (straight sides) geometric shape which most closely outlines said sign.

SIGN, IDENTIFICATION — Any sign which shall be used to advertise and identify the business conducted on the premises where the sign is located.

SINGLE AND SEPARATE OWNERSHIP — The ownership of a lot by one or more persons, partnerships or corporations, which ownership is separate and distinct from that of any adjoining lot.

SITE PLAN — A plan of a lot or subdivision on which is shown topography, location of all existing and proposed buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Commission in unusual or special cases.

SPECIAL EXCEPTION USE — A use which by virtue of its own peculiar characteristics may be permitted in particular areas only after review public hearing and approval by the Board of Adjustment.

SPECIAL FLOOD HAZARD AREA — An area having special flood hazard and shown on a Flood Insurance Rate Map as Zone A, AO, A1-30, AE, AH, VO, V1-30, VE, V, M, or E. [Added 12-12-1996 by Ord. No. 331]

SPECIFIED SEXUAL ACTIVITIES and SPECIFIED ANATOMICAL AREAS — Defined as those terms are defined in Title 24 of the Delaware Code, § 1602(17) and (18). [Added 12-8-1992 by Ord. No. 292]

START OF CONSTRUCTION — For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. [Added 1-13-1977 by Ord. No. 124; amended 7-9-1987 by Ord. No. 212]

START OF CONSTRUCTION (DEFINED FOR FLOODPLAIN) — For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvements and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on site, such as pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start" of construction means the first alteration of any wall, ceiling, floor or

other part of a building whether or not that alteration affects the external dimensions of the building. [Added 12-12-1996 by Ord. No. 331]

STORE — An establishment located in a permanent structure where goods are regularly offered for sale. [Added 5-11-1993 by Ord. No. 301]

STORY — That portion of a building included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, then the space between any floor and the ceiling next above it. A split-level story shall be considered a second story only if its floor level is six feet or more above the floor of the level next below it.

STORY, HALF — That portion of a building under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such half-story. A basement shall also be included as a "half-story."

STREAM BED — The limits of the land area covered by the waters in a stream under conditions of an average twenty-five-year storm.

STREET LINE — The dividing line between a lot and the outside boundary of a public street, road or highway legally open or officially plotted by the Town or between a lot and a private street, road or way over which the owners or tenants of two or more lots held in single and separate ownership have the right-of-way.

STRUCTURE — Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on or in the ground.

STRUCTURE (DEFINE FOR FLOODPLAIN) — In the Floodplain District, a walled and roofed building, including a gas or liquid storage tank that is primarily above ground, as well as a manufactured home. [Added 12-12-1996 by Ord. No. 331]

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. [Added 10-22-1991 by Ord. No. 276]

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a State of Delaware Inventory of Historic Places. [Added 1-13-1977 by Ord. No. 124]

SWIMMING POOL, PRIVATE — A swimming pool operated as a secondary use to a residential dwelling unit or units and located on an individual residential lot.

TOWNHOUSE — A building designed and occupied exclusively as a residence for one family and one of a group of three or more attached dwellings, placed side-by-side, separated by party walls, each containing one or two stories and each having separate front and rear or side entrances from the outside.

TRAILER CAMP — A lot or premises used for occupancy by two or more trailers or any other vehicles used for living or sleeping purpose.

TRAVEL TRAILER and RECREATIONAL VEHICLE — A vehicular, portable structure built on a chassis, designed as a temporary dwelling for travel, recreation and vacation, having a body width not exceeding eight feet and its body length not exceeding 29 feet.

USE — The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

VARIANCE — A grant of relief by the Board of Adjustment from the terms of this chapter of floodplain management regulations. [Added 1-13-1977 by Ord. No. 124]

YARD

- A. FRONT** — The required open space, extending along the street line or, in the case of a rear lot, extending along the building setback line, throughout the full width of the lot, exclusive of overhanging eaves, gutters, cornices or steps.
- B. REAR** — The required open space, extending along the rear line of the lot throughout the full width of the lot, exclusive of overhanging eaves, gutters, cornices or steps.
- C. SIDE** — The required open space, extending along the side line of the lot throughout the full depth of the lot, exclusive of overhanging eaves, gutters, cornices or steps.

ZONING PERMIT — A permit stating that the purpose for which a building or land is to be used is in conformity with the uses permitted and all other requirements under this chapter for the zone in which it is located or is to be located or as such requirements may be modified by the Board of Adjustment.

ARTICLE II

General Provisions

§ 225-6. Applicability of regulations.

No building shall hereafter be erected and no existing building shall be moved, structurally altered, rebuilt, added to or enlarged, nor shall any land be used for any purpose other than those included among the uses listed as permitted uses in each zone by this chapter and meeting the requirements set forth in the appended

Schedule.⁴ Nor shall any open space contiguous to any building be encroached upon or reduced in any manner, except in conformity to the area and bulk requirements, off-street parking requirements and all other regulations designated in the Schedule and this chapter for the zone district in which such building or space is located. In the event of any such unlawful encroachment or reduction, such building or use shall be deemed to be in violation of this chapter, and the certificate of occupancy shall become void.

§ 225-7. Preservation of natural features.

- A. No structure shall be built within 50 feet of a stream bed which carries water on an average of six months of the year or on land, which is subject to periodic overflow of a stream.**
- B. No persons, firm or corporation shall strip, excavate or otherwise remove topsoil for sale or other use other than on the premises from which taken, except in connection with the construction or alteration of a building on such premises and excavating or grading incidental thereto.**
- C. Existing natural features such as trees, brooks, drainage channels and views shall be retained. Whenever such features interfere with the proposed use of the property, the Town Manager may authorize their removal or relocation, provided that there will be, in his opinion, no substantial adverse affect upon other property values in the area and an alternate is not feasible.**

§ 225-8. Regulations applicable to all zones; prohibited uses.

- A. No lot shall have erected upon it more than one principal residential building. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered to provide a yard or open space for any other building.**
- B. Every principal building shall be built upon a lot with frontage upon a public street improved to meet the Town's requirements or for which such improvements have been insured by the posting of a performance guaranty pursuant to the Land Subdivision Ordinance of the Town of Elsmere⁵ unless relief has been granted by the Board of Adjustment.**
- C. At the intersection of two or more streets, no hedge, fence or wall (other than a single post or tree) which is higher than two feet above curb level, nor any obstruction to vision, shall be permitted in the triangular area formed by the intersecting street lines and a line joining each 30 feet distant from said intersection along said street line.**
- D. All yards facing on a public street shall be considered front yards and shall conform to the minimum front yard requirement for the zone in which located. Corner lots shall provide the minimum front yard requirements for the**

4. Editor's Note: The Schedule of Lot, Yard and Building Regulations is included at the end of this chapter.

5. Editor's Note: See Ch. 196, Subdivision and Land Development.

respective zone for both intersecting streets, for both principal and accessory buildings.

- E. Where a building lot has frontage on a street which the Comprehensive Plan or the Official Map of the Town indicates is proposed for right-of-way widening, the required front yard area shall be measured from such proposed right-of-way line.
- F. No front yard shall be used for open storage of boats, trailers, vehicles or equipment except for passenger automobile parking on driveways. All open storage areas in other yard areas shall be suitably screened from view from a public street.
- G. Business establishments or uses shall not display goods for sale purposes, nor shall coin-operated vending machines of any type be installed in any location which would infringe upon the required yard areas specified in this chapter.
- H. All yards, open space, off-street parking and required landscaping shall be contained within the zone in which the use is permitted.
- I. No commercial or construction vehicle over 3/4 ton in size shall be parked overnight or on Sunday other than in an enclosed garage in any residential zone. No vehicle for commercial advertising purposes shall be parked in any district at any time.
- J. A secondary building attached to a primary building shall comply in all respects with the rear requirements of this chapter for the primary building. Detached accessory buildings shall be located to the rear of the front building line of the primary building and shall otherwise conform with all other building line requirements, except that the minimum rear requirement in R-1 and R-2 Districts shall be five feet, and except that on all lots which run from street to street in R-1 and R-2 Districts shall maintain a minimum rear requirement of 20 feet. [Amended 9-12-1974 by Ord. No. 114]
- K. For the purpose of regulating the locations of accessory buildings on corner lots and on lots extending through between two parallel streets, all portions of a corner lot or a through lot which fronts on a public street shall be subject to the front yard requirements of the zone district in which said corner lot or through lot is located.
- L. When a new lot is formed so as to include within its boundaries any part of a former lot on which there is an existing building or use, the subdivision must be carried out in such a manner as will not infringe upon any of the provisions of this chapter either with respect to any existing structures or use and any proposed structures or use.⁶
- M. Off-street parking facilities shall adhere to the following:

⁶. Editor's Note: Former Subsection M, which immediately followed this subsection, regarding applicability to utilities, was repealed 1-13-1977 by Ord. No. 124.

- (1) Off-street parking space shall be provided as further specified in this chapter and shall be furnished with necessary passageways and driveways. All such space shall be deemed to be required space on the lot on which it is situated and shall not be encroached upon or reduced in any manner. All parking areas, passageways and driveways (except when provided in connection with one-family residences) shall be surfaced with a dustless, durable, all-weather pavement, clearly marked for car spaces, and shall be adequately drained, all subject to the approval of the Town Manager.
 - (2) None of the off-street parking facilities as required in this chapter shall be required for any existing building or use, unless said building or use shall be enlarged, in which case the provisions of this chapter shall apply both to the existing and the enlarged portion of the building or use.
 - (3) No off-street parking space shall be located within a required front yard area in any zone. For the purpose of this requirement, residential driveways shall not be considered parking spaces.
 - (4) All parking areas and appurtenant passageways and driveways serving business and industrial uses shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation. Adequate shielding shall be provided to protect adjacent residential zones from the glare of such illumination and from that of automobile headlights.
 - (5) Off-street parking areas located in commercial and industrial zones and which provide parking for 20 or more vehicles shall be planted with two-inch caliper nursery grown shade trees of a species approved by the Town Manager as suitable for the intended purpose and located throughout the parking area not less than 60 feet on center in both directions.
- N. The limitations of signs as set forth for the various zones by this chapter shall not apply to any sign or direction device erected by the federal, state, county or local government or agency thereof.
- O. The limitations of sign area as set forth by this chapter for the business and industrial zones shall not apply to parking lot markers, directional signs, entrances and exit signs and other such signs which are erected on the premises, provided that such signs do not exceed two square feet in area on any one side and do not contain any advertising of the use on the premises.
- P. Except in an R-1 Residential District, fences may be erected, altered or reconstructed to a height not to exceed four feet above ground level when located in the front yard area or to a height of six feet above ground level if located elsewhere on the lot, nor shall they be built to admit less than 50% air and light in the front and side portions of the lot only. All rear yard fences must contain a gate that is a minimum of three feet wide. In an R-1 Residential District, the same restrictions shall apply, except that a fence in the rear and side portions of the lot may admit less than 50% air and light. [Amended 9-10-

1987 by Ord. No. 215; 9-14-1989 by Ord. No. 244]

Q. Prohibited uses. Any use not specifically permitted in the zoning district established by this chapter is hereby specifically prohibited from that district, and further provided that the following uses and activities shall be specifically prohibited in any zone in the Town of Elsmere:

- (1) All billboards, signboards, advertising signs or devices not expressly related to the business being conducted on the premises or otherwise specifically permitted by this chapter.
- (2) Automobile wrecking yards, junkyards or the sorting and baling of scrap metal, paper, rags or other scrap material.
- (3) Coin-operated vending machines where they are not in an enclosed building, except within the HD District.
- (4) The parking, storing or keeping of a dismantled, inoperative or discarded motor vehicle or any parts thereof, unless within an enclosed building.
- (5) Massage parlors which provide services on- and/or off-premises, adult entertainment centers, adult bookstores and/or adult video stores shall not be permitted within 500 feet of any property used solely for residential purposes. No massage parlor, adult entertainment center, adult bookstore and/or adult video store shall be permitted within 1,500 feet of each other. No massage parlor, adult entertainment establishment or adult video store shall be permitted within 2,800 feet of any church or school. [Added 9-8-1977 by Ord. No. 130; amended 12-8-1992 by Ord. No. 292]
- (6) Businesses engaging in, carrying on or practicing the vocation or calling of clairvoyancy, palmistry, mesmerism, astrology, fortune-telling, character reading, exhibitions or sittings of like character; and businesses engaging in, carrying on or practicing the art of tattooing; and businesses engaging in or carrying on the sale of drug paraphernalia as defined in Title 16 of the Delaware State Codes, § 4701(13). [Added 9-8-1977 by Ord. No. 130; amended 6-29-1981 by Ord. No. 160]

§ 225-9. Site plan review by Planning Commission.

A. Purpose. In order to assure the harmonious development of all areas of the Town of Elsmere in accordance with intended appearance of each neighborhood as established by the Comprehensive Plan, to assure that maximum care is exercised to preserve and enhance existing natural features, to preclude the creation of traffic flow or traffic safety problems, to conserve the general value of property within the Town, to maximize efforts to assure each property owner the right to safe and comfortable enjoyment of his property and to take into account floodplain management programs in effect in the Town and in neighboring areas, a plan for every use for or structure proposed within the municipality shall be reviewed by the Planning Commission prior to the issuance of a zoning permit, including but not limited

to applications for new or replacement water supply systems and/or sanitary sewage systems and/or on-site waste disposal systems. [Amended 1-13-1977 by Ord. No. 124]

(1) The below-listed items need not be reviewed by the Planning Commission prior to the issuance of a zoning certificate or a permit, provided that in the opinion of the Code Enforcement Officer the request meets all other requirements of the Code and that no variance or special exception would be needed: [Added 6-13-2002 by Ord. No. 401]

(a) The replacement of any existing structure, so long as the replacement will not increase the size or change the general design of the existing structure.

(b) A fence.

(c) A shed, so long as it is no larger than 120 square feet.

(d) The commercial use of a building or structure that had been being used for commercial purposes, so long as the proposed use is not substantially different than the prior usage and that the proposed use is not expected to substantially increase the amount of traffic experienced by the existing or past tenants.

(e) Paved areas such as sidewalks, driveways, and patios. [Added 7-11-2002 by Ord. No. 406]

(f) An aboveground swimming pool. [Added 7-11-2002 by Ord. No. 406]

B. Procedure. After application for a zoning permit for the construction of any use of or structure and after determination by the Building Official that no variance or special exception from the terms of this chapter will be required as a prerequisite to issuance of such permit, the owner, builder or their agent shall submit three copies of the site plan for the entire parcel to be developed, architectural drawings and specifications to include all elevations of proposed buildings, the location of all buildings proposed upon the parcel, the location and type of buffering, screening and landscaping proposed, the size, location and arrangement of all off-street parking areas, driveways and loading areas, the size, location and types of signs proposed accessory to the building or use and such other information as may be required to permit consideration of the items listed above. Such plans shall be true and accurate, drawn at an appropriate scale and certified by a registered architect or licensed professional engineer. The Building Official shall refer one copy of such plans to each of the Planning Commission for review and recommendations. [Amended 1-3-1977 by Ord. No. 124]

(1) In the event that a variance or special exception to the terms of this chapter is required, including a special exception use permit, the owner, builder or their agent shall be required to meet the terms of this section only after the Board of Adjustment has approved the granting of the

variance or special exception use. The decision of the Board of Adjustment shall modify the terms and requirements of this chapter of any such particular matter and the Planning Commission shall work within the context of only the specific relief or exception so granted.

- (2) The Planning Commission shall determine, in its review, that the proposed site plan and structures will compare favorably with the community standards, other neighborhood improvements and the properly intended and planned appearance throughout any street or neighborhood. In making such determination, the Planning Commission shall consider:

- (a) The height, bulk and area of buildings.
- (b) The setback distances from all property lines and spacing of buildings on the site.
- (c) The size, location and type of signs.
- (d) The size, location, construction and proposed improvement of all buffer strips, screening and areas to be landscaped.
- (e) The size, location and arrangement of all off-street parking areas and loading areas.
- (f) The relation of the proposed development to the existing buildings and structures in the general vicinity and area.
- (g) The lighting of buildings, signs and grounds.
- (h) All provisions of this chapter not mentioned specifically above and the relationship of the proposed project to the health, safety and general welfare of the public and specifically the relationship of the proposed development to the Comprehensive Plan of the Town.

- C. Action by Planning Commission. The Planning Commission shall, within 45 days of its receipt of the proper materials referred to it by the Building Official, approve or disapprove the proposed development or construction. In the event of disapproval, the reasons shall be clearly stated to the Building Official in writing. The zoning permit applied for shall be denied until such conditions as the disapproval is based shall have been corrected and the written approval of the Planning Commission is obtained. The absence of a reply from the Planning Commission within the forty-five-day period shall constitute its approval, and the Building Official shall proceed on the basis of such approval.

§ 225-10. Off-street parking and loading regulations.

A. General off-street parking provisions.

- (1) Off-street parking spaces, open-air or indoor, shall be provided with all new construction or the creation of new uses as specified in this chapter,

on the same lot as the use which they are intended to serve, and shall be furnished with necessary passageways and driveways. All such space shall be deemed to be the required space on the lot on which the use it serves is situated and shall not be encroached upon or reduced in any manner. Insofar as possible, the provisions of off-street parking, in accordance with the standards of this article, shall accompany any rebuilding, reconstruction, alteration or remodeling of any building or premises. All parking areas, passageways and driveways shall be clearly marked for car spaces, except when provided in connection with family detached or semidetached dwelling units and shall be adequately drained and subject to approval of the Town Manager.

- (2) The collective provision of off-street parking areas by two or more buildings or uses located on adjacent lots is limited, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately, and further provided that the land upon which the collective facilities are located is owned by one or more of the collective users.
- (3) All parking areas and appurtenant passageways and driveways serving commercial and industrial uses shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation. Adequate shielding shall be provided by commercial and industrial uses to protect adjacent residential zones from the glare of such illumination and from that of automobile headlights.
- (4) When the computation of the number of required parking spaces results in a fraction, such fractions shall be resolved to the next highest whole number.
- (5) A site plan shall be filed with the zoning permit application where off-street parking facilities are required or permitted, under the provisions of this chapter in connection with the use or uses for which application is being made. Surfacing, landscaping, the location and design of entrances, exits, marking and lighting shall be subject to the approval of the Planning Commission to ensure adequate relation to traffic safety and protection of the adjacent residence area.
- (6) Indented parking, i.e., creating parking spaces by indenting the curblineline or right-of-way line of a street or by traversing said curblineline or right-of-way line except for access to a clearly defined parking lot is hereby prohibited.
- (7) A parking space shall be held to be an area 20 feet long and 10 feet wide, exclusive of aisle space, unless the use is a commercial parking lot and full-time attendant parking is provided, in which case the parking spaces served by the attendants may be 18 feet long and eight feet wide.

B. Parking areas in residential districts.

- (1) The establishment of any off-street parking area having a capacity of four or more automobiles shall be subject to the issuance of a zoning permit, and, further, subject to the following, it shall:**
 - (a) Have a buffer strip of at least 15 feet wide between it and any adjacent residential lot.**
 - (b) Be attractively landscaped and screened from neighboring residential lots.**
 - (c) Not extend into any required front yard areas, except for the driveways.**
 - (d) Be used solely for the periodic parking of private passenger vehicles (noncommercial vehicles).**
- (2) Not more than one boat or one recreation vehicle or one utility trailer may be parked in the rear yard of a lot containing a single-family detached or semidetached dwelling, provided that the accessory building yard requirements are observed.**
- (3) No recreational vehicle or utility trailer shall be allowed in front or side yards. No boat shall be allowed in a front yard. [Amended 4-9-1998 by Ord. No. 353]**

C. Parking areas in commercial and industrial districts.

- (1) Off-street parking areas shall be effectively screened from any residence zone or district.**
- (2) Parking areas may be located in any yard area, but shall not be closer than 15 feet to any street line or property line. Further, not more than 10 parking spaces shall be placed within a front yard of any lot in the HD or GI Districts having the minimum required frontage. For each 20 feet of width in excess of the required minimum width, one additional parking space may be placed in the front yard. In the CC Community Commercial District, all parking may be provided in the front yard. Buffer zone requirements shall not be superseded by these regulations. [Amended 1-13-1977 by Ord. No. 214; 5-30-1996 by Ord. No. 326]**
- (3) Curb cuts used as a means of ingress or egress for nonresidential off-street parking areas shall be of not less than 20 feet or more than 30 feet in width. No curb cut shall be located closer than 75 feet to the intersection of two public streets measured by extending the curblines to the point of intersection. Only one such curb cut shall be permitted for lots of less than 100 feet in width. One additional curb cut shall be permitted for each additional 100 feet of frontage or fraction thereof.**
- (4) Off-street parking areas which provide parking for 20 or more vehicles shall be provided with shade trees of a type approved by the Planning Commission. The shade trees shall be located in a planned manner within**

the parking lot area in quantity equal to one shade tree for every 10 parking spaces.

- (5) All open parking areas which are located at grade or at roof level (not above two floors) shall be screened from the view of adjoining residence districts, including such districts situated across a street. Such screening shall be maintained in good condition at all times, may be interrupted by normal entrances and exits and shall have no signs hung or attached thereto, except customary traffic directional and control signs.

D. Parking requirements. The number of off-street parking spaces to be provided for each use and establishment shall be calculated, in accordance with the standards prescribed by Subsection E, schedule of minimum parking requirements, in accordance with the following rules of application:

- (1) Parking or storage space may be provided within a building or elsewhere on the premises or on other premises of the same class or district applicable to the primary structure which is being served and within 1,000 feet of an entrance to the building or other establishment to be served, and, except when otherwise indicated by the terms of this chapter, required yard space other than front yards may be used for such purposes.
- (2) Where a building contains a number of uses or activities, the required off-street parking shall be the aggregate sum of that which would be required for each use individually.

E. Schedule of minimum parking requirements.

- (1) This schedule is organized to provide minimum parking standards within four classes of uses and activities: residential, commercial, industrial and miscellaneous.

(a) **Residential.**

- [1] One-family dwellings (detached and attached): two spaces for each dwelling unit.
- [2] Garden apartments: two spaces for each unit.

(b) **Commercial.**

- [1] General rule: one space for each 200 square feet of total floor area devoted to such functions, plus one space for each employee on the largest work shift if it is a "customer-oriented" use.
- [2] Restaurants and similar establishments: one space for each table or booth plus one space for each employee on the largest working shift.
- [3] Professional offices: one space for each 100 square feet of total

floor area devoted to such functions.

- [4] Business offices: one space for each 75 square feet of total floor area devoted to such functions.**
- [5] Wholesale trade establishments: one space for each employee on the largest work shift plus not fewer than four spaces for visitors for each 10,000 square feet of total floor area.**

(c) Industrial.

- [1] General rule: one space for each 250 square feet of total floor area devoted to assembly or manufacturing functions and one space for each 75 square feet of total floor area devoted to administrative office functions or two spaces for each employee of the total of the two largest work shifts, whichever is the greater.**
- [2] Warehouses: one space for each employee on the largest work shift plus not fewer than four spaces for visitors for each 10,000 square feet of total floor area.**

(d) Miscellaneous.

- [1] Churches and similar establishments: see § 225-28B(5). [Amended 5-30-1996 by Ord. No. 326]**
- [2] Theaters, auditoriums and other places of public assembly: one space for each three seats.**
- [3] Amusement facilities (recreations): one space for each 100 square feet of total floor area or one space for each four persons using the facilities at the projected peak hour of use. A bowling alley shall provide six spaces for each bowling lane.**
- [4] Schools: one space per staff member plus three for each administrative office. High schools shall provide student parking at the rate of five spaces per classroom.**
- [5] Public building: one space for each 200 square feet of total floor area.**
- [6] Private recreation: one space for each five members.**
- [7] Clubhouses (and lodges, etc.): one for each five members.**

- F. Off-street loading and unloading space. On the same premises with every building or part thereof hereafter erected to be occupied for the purpose of manufacturing, storage warehouse, retail store, wholesale store, market, hotel, hospital or other use similarly involving large-volume receipt of or distribution of materials or merchandise by motor vehicle, there shall be provided and maintained adequate space for loading and unloading services, so placed and**

arranged as not to interfere with public use of the sidewalks, street or alley. There shall be not less than one such loading and unloading space for every 20,000 square feet of building floor area or fraction thereof, in excess of 6,000 square feet, used for any of the above-mentioned purposes. To satisfy the above requirement, a loading and unloading space shall be not less than 10 feet by 60 feet within the property lines and have a height clearance of not less than 14 feet.

§ 225-11. Permit requirements. [Added 1-13-1977 by Ord. No. 124; amended 4-14-1983 by Ord. No. 182; 4-10-1990 by Ord. No. 247; 7-10-1990 by Ord. No. 263; 10-8-1991 by Ord. No. 275; 12-12-1996 by Ord. No. 331⁷]

- A. Within the Floodplain District, a permit shall be required for all proposed construction, substantial improvements and other developments, including the placement of manufactured homes.
- (1) An application for a permit shall be made in writing to and maintained by the Building Official on forms supplied by the municipality. The application shall contain information, including, but not limited to:
 - (a) The name and address of applicant.
 - (b) The name and address of owner of land on which proposed development is to occur.
 - (c) The name and address of contractor.
 - (d) A plan which details the size of the structure; whether it contains a basement; finished ground elevation; lowest floor (including basement) elevation in relation to mean sea level; power source and elevations; water supply; sanitary facilities; and all floodproofing measures, including the elevation in mean sea level to which the structure was floodproofed.
 - (e) The locations of all possible alternatives.
 - (f) The expected permanence of use.
 - (g) The effects of proposed use on adjacent landowners.
 - (h) All new developments greater than 50 lots or five acres, whichever is the lesser, shall include the base flood elevation data.
 - (i) An attached elevation certificate (FEMA Form 81-31), completed by a land surveyor, engineer or architect who is authorized by state law to certify elevation information.
 - (j) A independent hydraulic study performed according to FEMA guidelines, showing the effect of any and all proposed construction involving grading, fill, excavation or any activity changing the

7. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

elevation of the site for all sites either completely or partially in a floodway according to the most recent revision of the Official Town of Elsmere FIRM (Flood Insurance Rate Map). Such study shall be made at the cost of the applicant and shall become the property of the Town. Such hydraulic study must show that the proposed activity results in no increase in the elevations of the one-hundred-year flood and must be certified by a registered professional engineer.

- (2) An application for a permit shall be accompanied by an inspection fee of \$500. The application fee is not refundable.
- (3) Issuance of a permit for development within the Floodplain District is conditioned upon compliance with all applicable permit requirements of federal, state, county and other legally established authorities and this chapter. Provided further, that no such permit shall be issued unless the requirements of § 225-22B, as amended, are satisfied upon completion of the development, if such development is situated within the floodplain, as that area is defined in § 225-22A(1).
- (4) Development within the Floodplain District is subject to inspection by an approved inspector of the municipality.
- (5) An elevation certificate and a floodproofing certificate (for nonresidential structures) based on final construction must be completed by a registered professional surveyor, engineer or architect and attached to the permit file.

ARTICLE III Zone Regulations

§ 225-12. Establishment of zones. [Amended 1-13-1977 by Ord. No. 124]

For the purpose of this chapter, the Town of Elsmere is hereby divided into the following zoning districts:

R-1	Residential District
R-2	Residential District
R-GA	Garden Apartment District
CC	Community Commercial District
HD	Highway Development District
GI	General Industrial District
FP	Floodplain District

§ 225-13. Zoning Map.

The boundaries of all zone districts shall be shown on a map attached to and made a part of this chapter and titled "Zoning Map, Town of Elsmere". Said map and explanation and references thereon are hereby incorporated into and declared to be a part of this chapter.⁸

§ 225-14. Zone boundaries.

- A. Zone boundary lines are intended to follow the center line of streets, railroad rights-of-way, streams and recorded property lines, except where indicated otherwise by dimension or other notation on the Zoning Map of the Town of Elsmere.**
- B. Where zone boundaries are not fixed by dimension or other notation and where they approximately follow property lines or other natural features and do not scale more than 25 feet distant therefrom, such property line or natural feature shall be deemed to be the location of the zone boundary.**
- C. In unsubdivided land, where the zone boundary divides a property and the location of such boundary is not fixed by dimension or other notation on the Zoning Map, then the location of such boundary shall be obtained through the use of the graphic scale, and the Building Official shall so use the scale.**
- D. Where a district boundary line divides a lot held in single and separate ownership at the effective date of this chapter, the use regulations applicable to the less restricted district shall extend over the portion of the lot in the more restricted district a distance of not more than 50 feet beyond the boundary line.**

§ 225-15. Scheduled regulations.

The Schedule of Lot, Yard and Building Regulations, included as Table I, sets forth the regulations of this chapter with respect to minimum lot size, yard dimensions, maximum lot coverage, maximum height and number of stories and minimum floor area for each of the various zones. Unless modified elsewhere in this chapter, such standards shall be deemed to be the minimum (or maximum) permitted in each of the zones.⁹

- A. In an R-2 Zone, where the original structure as completed by the initial builder, prior to the date of adoption of this chapter, exceeds the maximum 30% lot coverage, that lot shall be entitled to an additional 10% lot coverage, not to exceed 40% total lot coverage, subject to all other pertinent zoning and building regulations. [Added 1-12-1995 by Ord. No. 315]**
 - (1) Such addition must be 50% open on all sides, without roof.**
 - (2) This subsection shall pertain only to those homes addressed off of Dover, Cypress, Sycamore and Maple Avenues.**

8. Editor's Note: The Zoning Map is on file in the Town offices.

9. Editor's Note: The Schedule of Lot, Yard and Building Regulations is included at the end of this chapter.

§ 225-16. R-1 Residential District.

A. Permitted primary uses.

- (1) One-family dwellings.**
- (2) Municipal parks, playgrounds, buildings and uses deemed appropriate and necessary by the Town Council of the Town of Elsmere.**
- (3) Golf courses.**
- (4) two-family dwelling, provided that such structure was regularly used as a two-family dwelling prior to the enactment of this Ordinance.

B. Permitted secondary uses.

- (1) Private garages not in excess of 750 square feet of building area.**
- (2) Customary residential storage building not in excess of 100 square feet of building area.**
- (3) Shelters for domestic pets not in excess of 50 square feet of building area, exclusive of runs.**
- (4) Other customary residential secondary structures such as private swimming pools, fireplaces, trellises, post lights and the like.**
- (5) Signs, subject to the restrictions of Article VII.**

C. Permitted special exception uses.

- (1) Public utility uses.**
- (2) Public and private schools.**
- (3) Convalescent home or sanitarium.**
- (4) Club or lodge organized for fraternal or social purposes, provided that the chief activity shall not be one which is customarily carried on as a business, and provided that the buildings and services shall be for the use of members and their guests only.**
- (5) Planned unit developments, at a gross density not to exceed 2.5 dwelling units per acre.**
- (6) Cluster residential development.**
- (7) Churches and similar places of worship, including rectories, parish houses and convents which are located on the same lot.**
- (8) Customary and conventional farming operations, including the raising of livestock, poultry, vegetables, flowers and horticultural materials, other than as a commercial greenhouse.**

(9) Home occupations. [Added 6-8-1978 by Ord. No. 135]

D. Other provisions and requirements.

- (1) Churches and similar permitted uses shall have a minimum lot area of two acres.**
- (2) At least 50%, but no more than 75% of the permissible dwelling units within a planned unit development shall be single-family detached dwellings. No more than 30% of the permissible dwelling units shall be townhouses and no more than 30% of the permissible units shall be apartments.**

§ 225-17. R-2 Residential District.

A. Permitted uses. [Amended 10-13-1994 by Ord. No. 312]

- (1) Any two-family semidetached dwellings.**
- (2) Any primary use enumerated in § 225-16A.**

B. Permitted secondary uses.

- (1) Any secondary use enumerated in § 225-16B.**

C. Permitted special exception uses.

- (1) Any special exception use enumerated in § 225-16C.**
- (2) Planned unit developments, in accordance with § 225-28F. [Amended 10-13-1994 by Ord. No. 312]**
- (3) Cluster residential developments.**
- (4) Townhouses in accordance with § 225-28F(4)(b)[1] and [2]. [Amended 10-13-1994 by Ord. No. 312]**

D. Other provisions and requirements.

- (1) Same as enumerated in § 225-16D.**
- (2) At least 10%, but no more than 25%, of the permissible dwelling units for a planned unit development shall be single-family detached dwellings. No more than 50% of the permissible dwelling units shall be townhouses and no more than 50% of the permissible dwelling units shall be apartments.**

§ 225-18. R-GA Garden Apartment District.

A. Permitted primary uses.

- (1) Garden apartment projects.**
- (2) Townhouse developments, at a density not to exceed 21 dwelling units per acre.**
- (3) Municipal parks, playgrounds, buildings and uses deemed appropriate**

and necessary by the Town Council of the Town of Elsmere.

- (4) Churches and similar places of worship, including rectories, parish houses and convents which are located on the same lot.
- (5) One-family dwellings, as per the lot yard and building regulations for the R-2 Residential District.
- (6) Two-family dwellings, as per the lot yard and building regulations for the R-2 Residential District.

B. Permitted secondary uses.

- (1) Any secondary use enumerated in § 225-16B, but only to apply to single-family, two-family and townhouse uses.
- (2) Any secondary use normally incidental to garden apartment projects, such as but not limited to playground and recreation areas, swimming pools, coin-operated laundry facilities and vending machines which are not externally visible, provided that the use of such facilities is limited to the residents of the project.

C. Permitted special exception uses.

- (1) Public utility uses.

D. Other provisions and requirements.

- (1) Same as enumerated in § 225-16D.
- (2) Garden apartment projects shall be subject to the following regulations:
 - (a) The gross density of the project (units per gross acre) shall not exceed 12 units per acre.
 - (b) Type and design of units.
 - [1] One-room apartment sizes shall contain not less than 500 square feet of gross floor area.
 - [2] All other apartment sizes shall contain not less than 750 square feet of gross floor area.
 - [3] Not more than 12 dwelling units shall be located in a single structure.
 - [4] No apartment shall be located within a cellar.
 - (c) Site design requirements.
 - [1] Under no circumstance shall access be obtained from a minor street.
 - [2] Private streets shall provide access to units within the project, but shall be constructed in accordance with applicable

municipal standards and shall be protected by a permanent easement.

- [3] The design of streets within the project shall provide proper access to every building for fire-fighting equipment, trash collection and deliveries.
- [4] The maximum distance between either entrance to any garden apartment building and the closest point of a parking area shall not exceed 200 feet.
- [5] Recreation areas shall be provided at a rate of 100 square feet per dwelling unit. Such areas shall be improved and equipped in a manner suited to the various age groups anticipated in the project.
- [6] The minimum distance between two residential buildings in the project shall be not less than 20 feet at the closest point.
- [7] Open courts in which residential buildings are located on three sides shall be of adequate size to provide natural light and ventilation to all dwelling units. Such courts shall not be less than 50 feet in width. In addition, the depth of such a court shall not exceed 1 1/2 times the width of the court.
- [8] Where contiguous buildings are parallel, there shall be a minimum difference of five feet in the front building line. Not more than three contiguous buildings shall have parallel front building lines, after which the next building shall be oriented so that its building line deflects from the parallel line by at least 30°.
- [9] The character of the site shall be preserved by retaining and protecting all existing healthy tree growth and other natural features of the site. Such additional plant material shall be added as are necessary to provide privacy, shade and beauty of buildings and grounds and screen objectionable features.
- [10] Outdoor lighting fixtures shall be provided at locations which will assure the safe and convenient use of walks, steps, parking areas, driveways, streets and other such facilities.
- [11] Electric power and telephone lines shall be installed underground.
- [12] Facilities for the temporary sanitary storage of trash and refuse shall be provided at the rate of one such area for each 10 dwelling units. The design of such facilities shall meet with the approval of the Division of Physical Health. Trash and refuse shall be removed from these storage areas at least twice each week for disposal. On-site incineration is prohibited.

- (d) A resident superintendent shall be provided for each project. Any project which includes more than 100 units shall have one additional maintenance employee for each additional 100 units or part thereof.
- (e) Garden apartment projects shall be subject to the site design review procedure set forth in this chapter.

E. Permitted special exception uses. [Added 10-27-1992 by Ord. No. 286]

- (1) Offices for professional services and administrative activities limited to the following:
 - (a) Advertising agency.
 - (b) Attorney.
 - (c) Beautician.
 - (d) Broker.
 - (e) Accountant.
 - (f) Chiropractor.
 - (g) Dentist.
 - (h) Incorporator.
 - (i) Manicurist.
 - (j) Nurse.
 - (k) Occupational therapist.
 - (l) Optometrist.
 - (m) Osteopath.
 - (n) Photographer.
 - (o) Physician.
 - (p) Private detective.
 - (q) Engineer.
 - (r) Psychologist.
 - (s) Secretary.
 - (t) Public stenographer.
 - (u) Sales representative.
 - (v) Telephone answering service.

- (w) **Travel agent.**
- (x) **Commercial lessor.**
- (y) **Real estate broker.**
- (2) **All such activities shall be permitted in parts of structures in which the majority of the square footage of occupiable space is subject to flooding in the floodplain, as that area is defined in § 225-22A(1) and located in areas designated under § 225-18A(1).**

§ 225-19. CC Community Commercial District.

A. Permitted primary uses.

- (1) **Retail business establishments, limited to the following:**
 - (a) **Hardware, paint, glass and wallpaper stores.**
 - (b) **Department stores and variety stores.**
 - (c) **Dry goods stores.**
 - (d) **Food stores, dairy stores and retail bakeries.**
 - (e) **Apparel and accessories stores.**
 - (f) **Furniture, home furnishings and equipment stores.**
 - (g) **Radio, television and music stores.**
 - (h) **Eating and drinking places, not including drive-in restaurants.**
 - (i) **Drug stores.**
 - (j) **Liquor stores.**
 - (k) **Antique stores.**
 - (l) **Book and stationery stores.**
 - (m) **Sporting goods, bicycle and hobby stores.**
 - (n) **Jewelry stores.**
 - (o) **Florist stores.**
 - (p) **Cigar stores and news dealers.**
 - (q) **Camera, photographic supply and art-supply stores.**
 - (r) **Gift, novelty and souvenir stores.**
 - (s) **Optical goods stores.**
 - (t) **Luggage and leather goods stores.**
- (2) **Personal service establishments limited to the following:**

- (a) Banks and fiduciary institutions.
- (b) Credit agencies.
- (c) Security and commodity brokers.
- (d) Real estate and insurance offices.
- (e) Holding and investment company offices.
- (f) Laundry and dry-cleaning pickup stores.
- (g) Photographic studios.
- (h) Barber- and beauty shops.
- (i) Shoe repair shops.
- (j) Garment pressing, alteration and repair shops.
- (k) Miscellaneous repair services, other than automotive.
- (l) Motion picture theaters, except outdoor.
- (m) Dance studios and schools.
- (n) Medical and health services, excluding veterinarian services.
- (o) Legal services.
- (p) Engineering and architectural services.
- (q) Accounting and bookkeeping services.
- (r) Funeral homes.
- (s) State-approved day-care center. [Added 4-14-1983 by Ord. No. 182]
- (3) Municipal parks, playgrounds, buildings and uses deemed appropriate and necessary by the Town Council of the Town of Elsmere.
- (4) Printing or publishing establishment.
- (5) Residential uses enumerated in § 225-16A, B and C subject to the provisions of § 225-16D. [Added 3-29-1982 by Ord. No. 172]
- (6) Two-Family dwellings
- C. Permitted secondary uses.
 - (1) Off-street parking facilities for the use of customers and employees.
 - (2) Garage space for the storage of commercial vehicles uses in conjunction with a permitted commercial use.
 - (3) Signs in accordance with the regulations of this chapter.
- D. Special exception uses.

- (1) Public utility uses.**
- (2) Commercial uses which are of the type identified in § 225-19B and C, but were not specified.**
- (3) General office uses. [Added 3-29-1982 by Ord. No. 172]**
- (4) Motor vehicle service establishment use. [Added 1-28-1992 by Ord. No. 279]**
- (5) Commercial uses specified in § 225-19B and C, but which are not conducted nor intended to be conducted on a regular, continuous basis. Such uses may be those of a seasonal nature or those not conducted in a store. [Added 5-11-1993 by Ord. No. 301]**

E. Other provisions and requirements.

- (1) Truck loading and unloading facilities shall be provided on the property in other than the front yard area in sufficient amount to permit the transfer of goods in other than a public street.**
- (2) Each permitted use shall be conducted within a completely enclosed building except for off-street parking.**
- (3) No permanent storage of merchandise, articles or equipment shall be permitted outside the building. Temporary outdoor storage in conjunction with a retail or other permitted use shall be permitted, provided that each storage shall be limited to a reasonable supply of the goods which are to be sold and displayed on the premises and that such storage shall be within a fenced area and that no goods, articles or equipment shall be displayed or offered for sale beyond the front line of the buildings on such premises or beyond the side lines of the buildings on corner premises.**
- (4) No vending machine or station or similar use shall be allowed in the required front yard or in a yard abutting a street.**
- (5) Each use established in this zone shall set aside at least 20 feet in width immediately adjacent to any street upon which the lot has frontage and extending for the full frontage of the lot, for purposes of providing for proper site distance and buffering from the public road. Within such area, the owner shall establish and maintain a planting of grass and/or horticultural ground cover. Other landscape materials may be incorporated, provided that there is no obstruction to vision other than a tree trunk, in the area between two feet and seven feet above ground level. No other use shall be made of this buffer area other than for a single driveway to provide access to the use for each 100 feet of frontage upon a public road. Such driveway shall not exceed 32 feet in width.**
- (6) Wherever the property line of a use in this zone abuts the boundary of a residence zone, an area of not less than 20 feet in width shall be set aside as a buffer area and used for no other purpose. Said buffer shall be**

planted with a screen of evergreen shrubs which, in the opinion of the Planning Commission, will be sufficient to preclude any adverse effect of the use upon adjacent residential property or from the transmission of headlight glare across the property line. In addition to the landscape screen, the area shall be adequately planted, with other landscape materials, grass and/or ground cover to present an attractive appearance.

- (7) It shall be prohibited in any business establishment open to persons under the age of 17 years to display a book, pamphlet, newspaper, magazine, film or video cassette, the cover of which depicts material harmful to minors. Any business establishment which deals in material harmful to minors is deemed to have complied with this subsection if the establishment physically and visually segregates material harmful to minors and keeps such materials in a separate area or room to which persons under 17 are not permitted. [Added 12-8-1992 by Ord. No. 292]

§ 225-20. HD Highway Development District.

A. Permitted primary uses.

- (1) Retail stores and personal service establishments, including but not limited to commercial uses identified in § 225-19B(1), (2) and (5). [Amended 4-14-1983 by Ord. No. 182]
- (2) Restaurant.
- (3) Indoor facility of amusement or assembly.
- (4) Club or lodge.
- (5) Bus station.
- (6) Municipal buildings and uses deemed appropriate and necessary by the Town Council of the Town of Elsmere. [Added 4-14-1983 by Ord. No. 182]
- (7) General office uses. [Added 4-14-1983 by Ord. No. 182]

B. Permitted secondary uses.

- (1) Any secondary use enumerated in § 225-19C.

C. Permitted special exception uses.

- (1) Laboratory (scientific or industrial research testing, experimental), provided that no processing shall be permitted except insofar as such processing is incidental to a research, experimental or testing process and there is no commercial production or storage of goods, materials or any other substance for sale, except as may be produced by a small pilot plant for off-site sale or for storage necessary for scientific research.
- (2) Tourist cabin court, hotel or motel, for transient guests only, on a lot area of three acres or more, provided that such use is located so as not to detract from the character of the immediately surrounding area.

- (3) Service station, automobile sales agency, public garage, parking garage or lot (not to include car lot or trailer sales agency as a main use), but not including storage of wrecked cars, provided that:

 - (a) All facilities are located and all services are conducted on the lot;
 - (b) All repair work shall be conducted within an entirely enclosed building;
 - (c) No equipment for the service of gasoline or oil shall be placed closer to any street or property line than 20 feet;
 - (d) No portion of such structure or its equipment shall be located within 800 feet of another service station on the same side of the street within the same block; and
 - (e) Any such use shall be permitted only where it is determined that it will not materially interfere with the main pedestrian movement in conjunction with a compact retail area.
- (4) Contractors', craftsmen's or general service shop, including welding and similar shops.
- (5) Motor vehicle body repair shop, provided that all repair work shall be conducted within an entirely enclosed building; and incidental storage of materials and wrecked or damaged vehicles out of doors shall be shielded from any adjacent streets, uses or residential areas by fencing, landscaping or other appropriate measures. [Amended 4-14-1983 by Ord. No. 182]
- (6) Wholesale establishment.
- (7) Commercial greenhouse.
- (8) Veterinarian services.
- (9) Public utility uses. [Added 7-12-1984 by Ord. No. 193]

D. Other provisions and requirements.

- (1) Same as enumerated in § 225-19E.
- (2) Access barrier. Each use established in this zone shall set aside an area at least 30 feet in width immediately adjacent to any street upon which the lot has frontage and extending for the full frontage of the lot, for purposes of providing for proper site distance and buffering from the public road. Within such area, the owner shall establish and maintain a planting of grass and/or horticultural ground cover. Other landscape materials may be incorporated, provided that there is no obstruction to vision, other than a tree trunk, in the area between two feet and seven feet above ground level. No other use shall be made of this buffer area other than for such accessways as are provided for in Subsection D(3) below.

- (3) **Accessways.** Each grouping of attached buildings or grouping of uses permitted as part of a single integrated plan shall have not more than two accessways to any one public highway or street. Neither of such accessways shall be more than 32 feet in width. The intent of this section is to encourage the use of common accessways by two or more permitted highway uses in order to reduce the number and closeness of access points along the highway and to encourage the fronting of commercial structures upon a marginal street, private roadway or similar area and not directly upon a public highway. Adequate acceleration and deceleration lanes shall be provided in the vicinity of shopping centers and in other locations where desirable.
- (4) **Off-street parking and loading.** Off-street parking and loading areas shall be provided. In addition, areas provided for the loading and unloading of delivery trucks and other vehicles and for the servicing of establishments or shops by refuse collections, fuel and other service vehicles shall be so arranged that they may be used without blocking or otherwise interfering with the use of accessways or automobile parking facilities.
- (5) **Special buffer requirements adjacent to residential districts.** Wherever the property line of a use in this zone abuts the boundary of a residence zone, an area of not less than 50 feet in width shall be set aside as a buffer area and used for no other purpose. Said buffer area shall be planted with a screen of evergreen shrubs, which in the opinion of the Planning Commission will be sufficient to preclude any adverse effect of the use upon adjacent residential properties, either by reason of objectionable view from the residential property or from the transmission of headlight glare across the property line. In addition to the landscape screen, the area shall be adequately planted with other landscape materials, grass and/or ground cover to present an attractive appearance. Prior to the issuance of a zoning permit, the Building Official shall submit the applicant's plans for such buffer area to the Planning Commission for their approval.

§ 225-21. GI General Industrial District.

A. Permitted primary uses.

- (1) **Manufacturing uses, including but not necessarily limited to:**

 - (a) **Electronic component manufacture and assembly.**
 - (b) **Bottling establishment.**
 - (c) **Carpet and rug cleaning.**
 - (d) **Food and associated industries.**
 - (e) **Contractor or general service shop, including plumbing, heating, carpentry, welding and similar shop.**

- (f) Scientific research laboratories and other experimental, testing or research establishment, including applied engineering research such as product development.
- (g) Manufacture of beverages, ceramic products, clothing, cosmetics, electrical appliances, silverware, tobacco products, tools and hardware, toys and umbrellas.
- (h) Manufacture of products from the following previously prepared materials: bone, canvas, cork, feathers, felt, fur, glass, hair, horn, leather, paper, plastics, shells, small rubber products and synthetic treated fabrics (excluding all rubber and synthetic processing) and wood.
- (i) Manufacture of jewelry, watches, clocks, optical goods, musical, professional and scientific equipment.
- (j) Light metal processing, including fishing, plating, grinding, sharpening, polishing, cleaning, rustproofing and heat treatment; fabrication or assembly of small products.
- (k) Textile manufacture or processing, excluding bleaching.
- (l) Warehousing or storage within a completely enclosed building, excluding storage of hazardous materials.
- (m) Printing or publishing establishment.
- (n) Business establishment, wholesale.
- (o) Building materials supply or distribution facility.
- (p) Uses enumerated in § 225-20A and B, subject to the provisions of § 225-19E. [Added 4-14-1983 by Ord. No. 182]

B. Permitted secondary uses.

- (1) Signs, in accordance with the provisions of this chapter.
- (2) Private garage and storage buildings which are necessary to store any vehicles, equipment or materials on the premises.
- (3) Off-street parking space for the use of employees and visitors.

C. Special exception uses.

- (1) Motor vehicle service establishments.
- (2) Uses enumerated in § 225-20C(2), (7) and (8). [Added 4-14-1983 by Ord. No. 182]
- (3) Public utility uses. [Added 7-12-1984 by Ord. No. 193]
- (4) Motor vehicle body shops. [Added by Ord. No. 382]

D. Other provisions and requirements.

- (1) Access barrier.** Access to the public highway or street shall be controlled in the interest of public safety. Each building or group of buildings and its parking or service areas shall be physically separated from the highway or street by a curb, planting strip or other suitable barrier against unchanneled motor vehicles ingress or egress, except for accessways as authorized by Subsection D(2) below.
- (2) Accessways.** Each separate parcel shall have not more than two accessways to any one public highway or street. Neither of such accessways shall be more than 32 feet in width. The intent of this section is to encourage the use of common accessways by two or more parcels in order to reduce the number and closeness of access points along the street or highway and to encourage the fronting of permitted structures upon a marginal street and not directly upon a public highway.
- (3) One off-street parking space** shall be provided for each employee on the maximum work shift, provided that at no time shall the use result in parking on a public street for any reason.
- (4) Parking areas** may be located in any of the required yard areas other than the front yard, provided that they are not closer than 20 feet from the boundary of a residential zone or street line. Refer to § 225-10E(1)(c) for parking standards, which shall not be superseded by these regulations. [Amended 9-10-1987 by Ord. No. 214]
- (5) Each use located in this zone** shall provide truck loading and unloading space on the same lot and in other than the required front yard so as to permit the transfer of goods in other than a public street.
- (6) Each use established in this zone** shall set aside 10% of the tract for seeding and landscaping and use that area for no other purposes.
- (7) All industrial activities or processes** shall take place within an enclosed building. Incidental storage of materials and vehicles out of doors shall be shielded from any adjacent public streets or residential areas by fencing, landscaping or other appropriate measures.
- (8) The following uses or activities are specifically prohibited in this zone:**

 - (a) Auction markets.**
 - (b) Automobile wrecking yards, junkyards or disassembly yards or the sorting or bailing of scrap metal, paper, rags or other scrap metal.**
 - (c) Gas (illuminating or heating) storage, except for consumption on the premises.**
 - (d) Incineration, reduction, storage or dumping of slaughterhouse refuse, rancid fats, garbage, trash, junk, dead animals or offal, except by the municipality or its agents.**

- (e) Petroleum or its derivatives except when stored in underground tanks and not in excess of 40,000 gallons of fuel oil or 20,000 gallons of gasoline or kerosene.
- (f) Residential dwelling units.
- (9) Along any district boundary line, a buffer yard shall be provided which shall not be less than 100 feet in width and shall be used for no other purpose. This required yard shall be measured from the boundary line or from the street line where the street constitutes the boundary. The 30 feet of such yard space nearest the district boundary line shall be used only as an evergreen buffer planting strip, on which shall be placed shrubbery and/or trees. Where a street constitutes a boundary, screen effect will not be required. [Amended 9-10-1987 by Ord. No. 214]
- (10) In no case shall the smoke emitted into the open air from any fuel-burning equipment, internal combustion engine, open fire, stack or chimney exceed a shade or appearance darker than No. 2 of the Ringelmann Smoke Chart.
- (11) There shall be no emission of odorous gases, odorous matter or fumes in such quantities as to be evident or perceptible to human senses at the property lines of the lot on which the use is conducted, and no emission shall be made which can cause damage to human health, to animals or vegetation or other forms of property or which can cause any soiling at any point beyond the lot line of the use creating the emission.
- (12) Dust from any processing operation will be minimized by the installation and use of appropriate mechanical and electrical devices to the extent necessary to ensure that such dust will not be offensive at or beyond any property line. All internal roads, drives and parking areas for the use of the general public or by employees or trucks shall be hard-surfaced. All other roads or drives for occasional use shall have a dust-free surface and shall be maintained in a dust-free condition at all times. All dry waste in the form of dust or fine particles will be transported in covered or closed vehicles. Disposal of waste within the Town shall be in a manner and place approved by the Town Council.
- (13) At no point on the boundary of the property on which a use is conducted shall the sound pressure level of any individual operation or plant (other than background noises produced by sources not under control of this chapter, such as the operation of motor vehicles or other transportation facilities) exceed the decibel levels in the designated octave bands shown below:

Octave Band Cycles Per Second	Sound Pressure Level in Decibels
0 to 75	72
75 to 150	67

150 to 300	59
300 to 600	52
600 to 1,200	46
1,200 to 2,400	40
2,400 to 4,800	34
Above 4,800	32

- (14) Sound levels shall be measured with a sound-level meter and associated octave band analyzer manufactured according to standards prescribed by the American National Standards Institute, Inc., New York, New York. Measurements shall be made using the flat network of the sound-level meter. Impulsive-type noises shall be subject to the performance standards hereinbefore prescribed, provided that such noises shall be capable of being accurately measured with such equipment. Noises capable of being so measured, for the purpose of this chapter, shall be those noises which cause rapid fluctuation of the needle of the sound-level meter with a variation of no more than plus or minus two decibels.
- (15) Noises incapable of being measured as indicated above, such as those of an irregular and intermittent nature, shall be controlled so as not to become a nuisance.
- (16) The proposed use shall produce no objectionable heat, glare or radiation beyond the property line. No industrial use or operation shall produce a glare or flash visible from any boundary line of a property on which the use is located. Yard lights and/or floodlights shall be so installed, shielded or directed not to cause objectionable glare to surrounding property. The light source itself shall not be visible from any property line.
- (17) The proposed use shall not endanger surrounding area by reason of fire or explosion. Each use shall comply with all pertinent state laws or regulations and with the following specific requirements where applicable:
 - (a) The manufacture, storage, handling and use of explosives, fireworks and similar materials shall be subject to the rules and regulations of the appropriate state agency.
 - (b) The handling, transporting and utilizing of liquid petroleum gases shall be subject to approval of, and shall comply with, the rules and regulations of the appropriate state agency.
- (18) The proposed use shall not create an objectionable traffic condition on the highway or in an adjacent area or generate a nuisance to surrounding property by reason of truck traffic.
- (19) The proposed use shall not result in electrical disturbance in an adjoining or nearby residence or other use, adversely affect the operation of equipment, other than on the property on which the disturbance is

located or emit dangerous radioactivity at any point.

- (20) The proposed use shall not contribute to the pollution of waters or endanger the underground supply to other properties.
- (21) The proposed use shall not create any other objectionable condition in adjoining areas which will endanger health, safety or the proper use of property.
- (22) The applicant when requested shall demonstrate that the proposed use will comply with such other standards as may have been adopted by the Town Council and adequate provisions will be made to reduce and minimize any objectionable elements to the degree necessary to ensure that the proposed use will not be noxious, hazardous or offensive. In order to determine that adequate safeguards are provided, the Building Official may require that the applicant submit necessary information, impartial expert judgments and written assurances; obtain the advice of official agencies or of private consultants; and require that the use comply with such tests or provide such safeguards as may be deemed necessary.

§ 225-22. Floodplain District. [Added 1-13-1977 by Ord. No. 124]

A. Establishment.

- (1) The Town of Elsmere shall establish a Floodplain District to include all areas subject to inundation by waters of the one-hundred-year flood. The source of this delineation shall be the Flood Insurance Study for the Town of Elsmere, New Castle County, Delaware, by the Federal Emergency Agency, Federal Insurance Administration. The Floodplain District shall be deemed an overlay on any existing and hereafter established zones or district within the Town of Elsmere. For the purpose of this chapter, the areas considered to be floodplain within the Town shall be those areas identified as being subject to the one-hundred-year flood in the Flood Insurance Study and on the Flood Insurance Rate Map prepared for the Town by the Federal Emergency Management Agency (FEMA) dated April 17, 1996, or latest version thereof. [Amended 7-9-1987 by Ord. No. 212; 10-8-1987 by Ord. No. 216; 12-12-1996 by Ord. No. 331]
 - (a) A map showing all areas considered to be subject to the one-hundred-year flood is available for inspection, at the Town offices. For the purpose of this chapter, the following nomenclature is used in referring to the various kinds of identified floodplain areas:
 - [1] FW (Floodway Area) — The areas identified as "Floodway" in the Flood Insurance Study prepared by FEMA.
 - [2] FF (Flood-Fringe Area) — The areas identified as "Floodway Fringe" in the Flood Insurance Study prepared FEMA.
 - (b) The FW (Floodway Area) is delineated for purposes of this chapter

using the criteria that a certain area within the floodplain must be capable of carrying the waters of the one-hundred-year flood without increasing the water surface elevation of that flood more than one foot at any point. The areas included in this area are specifically defined in the Floodway Data table contained in the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.

- (c) The FF (Flood-Fringe Area) shall be that area of the one-hundred-year floodplain not included in the Floodway. The basis for the outermost boundary of this District shall be the one-hundred-year flood elevations contained in the flood profiles of the above-referenced Flood Insurance Study and as shown on the accompanying Flood Insurance Rate Map.
- (2) The delineation of the boundaries of the Floodplain District may be revised by the Town Council where there are modified data reflecting natural or man-made physical changes. All such changes shall be subject to the review and approval of the Federal Insurance Administrator.

B. Development regulations.

- (1) Within any FW (Floodway Area) and/or FF (Flood-Fringe Area), the following provisions shall apply: [Amended 7-9-1987 by Ord. No. 212; 10-8-1987 by Ord. No. 216; 7-10-1990 by Ord. No. 263]
 - (a) Within any FW (Floodway Area), the following provisions apply:
 - [1] Any new construction, development, use, activity encroachment that would cause any increase in flood heights shall be prohibited.¹⁰
 - (b) For all subdivisions and other proposed new development, including substantial improvements, the following regulations shall be met:
 - [1] All proposals shall be consistent with the need to minimize flood damage.
 - [2] All public and private water supply systems and/or sanitary sewage systems shall be designed, located and installed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 - [3] All gas, electric, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. [Amended 2-12-1991 by Ord. No. 268]

10. Editor's Note: Former § 225-22B(1)(a)[2], which required a permit from DER, which previously followed this subsection, was repealed 12-12-1996 by Ord. No. 331.

- [4] All drainage facilities within and leading to or from the Floodplain District shall be adequately designed, located and installed to minimize or eliminate damage resulting from the one-hundred-year flood.
 - [5] On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. [Added 2-12-1991 by Ord. No. 268]
- (c) Prior to any alteration or relocation of a watercourse, all adjacent communities and State Coordinating Office shall be notified. Copies of such notification shall be submitted to the Federal Insurance Administrator.
 - [1] Within the altered or relocated portion of any watercourse, the flood-carrying capacity shall be maintained.
 - [2] No new construction, development, use, activity or encroachment shall be allowed, unless a hydraulic analysis, as required by § 225-11A(1)(j), showing no increase in one-hundred-year flood heights is submitted by the applicant and forwarded for review and comment to FEMA. [Added 1-13-1977 by Ord. No. 124]
- (d) Within any FW or FF District, required that all new construction and substantial improvements of residential structures:
 - [1] Be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. [Amended 2-12-1991 by Ord. No. 268]
 - [2] Have the lowest floor (including basement) elevated to or above the base flood level.
 - [3] Utilize methods and practices which minimize flood damage.
 - [4] Be constructed with materials and utility equipment resistant to flood damage.
- (e) Within any FW or FF District, it is required that all new construction and substantial improvements of nonresidential structures:
 - [1] Be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement.
 - [2] Either have the lowest floor (including basement) elevated to or above the base flood level; or, together with attendant utility and sanitary facilities, be designed so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability

of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. All new construction and substantial improvements with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet the following minimum criteria: A minimum of two openings having a net area of no less than one square inch for every square foot of enclosed area subject to no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters. [Amended 2-12-1991 by Ord. No. 268; 12-12-1996 by Ord. No. 331]

- [a] Where floodproofing is utilized for a particular structure in accordance with Subsection B(1)(e)[2] above, then a registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, hydrostatic and hydrodynamic loads, impact and uplift forces and other factors associated with the base flood, and a record of such certificates indicating the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community. Any structure, or part thereof, which will not be completely or adequately elevated shall be designed and constructed to be completely or essentially dry in accordance with the standards contained in the publication entitled "Flood-Proofing Regulations" (U.S. Army Corps of Engineers, June 1972), or some other equivalent standard, for that type of construction.
- [b] All new construction and substantial improvements with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this improvement must be either certified by a registered professional engineer or architect or meet the following minimum criteria: A minimum of two openings having a total net area of no less than one square inch for every foot of enclosed area subject to flooding shall be

provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters. [Amended 12-12-1996 by Ord. No. 331]

- [3] Utilize methods and practices which minimize flood damage.**
- [4] Be constructed with materials and utility equipment resistant to flood damage.**

(f) All manufactured homes shall:

- [1] Utilize methods and practices which minimize flood damage.**
- [2] Utilize materials and utility equipment which are resistant to flood damage.**
- [3] Be anchored to resist flotation, collapse or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side; frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side; all components of the anchoring system be capable of carrying a force of 4,800 pounds; and any additions to the manufactured home be similarly anchored.**

(g) Manufactured homes to be placed or substantially improved within any floodplain area on sites outside of a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision or in an existing manufactured home park or subdivision in which a manufactured home has incurred substantial damage, as defined herein, as the result of a flood shall: [Amended 2-12-1991 by Ord. No. 268]

- [1] Be elevated on a permanent foundation so that the lowest floor of the manufactured home is elevated to or above the base flood elevation; and**
- [2] Be securely anchored to adequately anchored foundation system to resist flotation, collapse and lateral movement.**

(h) Manufactured homes to be placed or substantially improved within any floodplain area in an existing manufactured home park or subdivision and not subject to the provisions of § 225-22B(1)(g) shall

be elevated so that either: [Amended 2-12-1991 by Ord. No. 268]

- [1] The lowest floor of the manufactured home is at or above the base flood elevation; or
- [2] The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored foundation system to resist flotation, collapse and lateral movement.

ARTICLE IV Permitted Modifications

§ 225-23. Height modifications.

- A. The height limitations of this chapter shall not apply to silos, church spires, belfries, cupolas and domes not used for human occupancy.
- B. Chimneys, ventilators, skylights, water tanks and similar features and necessary mechanical appurtenances usually carried on and above the roof level may exceed the height limitations of this chapter by not more than 15 feet, provided that not more than 30% of the roof area is occupied by such equipment. If such equipment is construed as a second structure, apart from the primary structure, the height restrictions of this chapter shall apply.
- C. The provisions of this chapter shall not apply to prevent the erection above the building height limit of a parapet wall or cornice for ornament (and without windows) extending above such height limit not more than five feet. Public and quasi-public buildings, schools, churches and other similar permitted uses shall increase the front, rear and side yards by one foot for each foot by which such buildings exceed the height limit herein established for such zone in which it is located, and further provided that in no case shall any building have a height greater than 50 feet.

§ 225-24. Undersized lots.

Any parcel of land with an area or width less than that prescribed for a lot in the zone in which such a lot is located may be used as a lot for any purpose permitted in the zone, provided that the minimum area requirements for such lot shall be 50% of the area and width requirements for the zone in which located, and further provided that all other regulations prescribed for the zone by this chapter are complied with. Lots which are not of the required minimum area or width may be used for any purpose permitted in the zone in which they are located.

§ 225-25. Permitted yard area modifications.

- A. Front yards. In such cases in residential and commercial zones where the frontage on the same side of the street within 500 feet is 50% or more developed, then the required front yard area for a new structure shall be modified to the average for existing development.

- B. Side yards. In the case of lots upon which an existing structure is located or which comply with the provisions for modification of § 225-24, combined total side yard requirements, as specified in Column 6 of Table I, shall be reduced by six inches for each foot by which a lot is less than the minimum requirement specified in Column 4 of Table I for the zone in which located. In any case, the said yard area for either side yard shall not be reduced to less than 50% of the requirement of Column 5 of Table I.¹¹**

§ 225-26. Temporary uses.

- A. It is recognized that it may be in the interests of the Town of Elsmere and in accordance with the purpose of this chapter to permit temporary activities for a limited period of time, which activities may not be permitted by other provisions of this chapter, if such uses are of such a nature and are so located that at the time of application they will:**
- (1) In no way exert a detrimental effect upon the lawful use of land and activities normally permitted in the zone in question; and**
 - (2) Be intended to contribute materially to the welfare and well-being of the public or to the lawful improvement or development of land.**
- B. Upon proper application to and favorable findings by the Town Council, the Building Official may be directed to issue a permit for such period as the Town Council may specify, not to exceed 30 days. Such permit to be issued must state the specific temporary activities to be conducted on the premises. All temporary use permits will be issued on the condition that the grounds on which the use is situated be returned to its former condition within 72 hours. [Amended 9-14-1989 by Ord. No. 243]**

ARTICLE V

Special Exception Uses

§ 225-27. Guiding principles.

- A. Recognizing that certain uses, activities and structures are necessary to service the needs and convenience of the Town of Elsmere and, at the same time, recognizing that such uses may be or become inimical to the public health, safety and general welfare if located and operated without proper consideration being given to existing conditions and character of the surrounding area, such uses are hereby designated as special exception uses. In addition to other powers conferred by this chapter and applicable statutes, the Board of Adjustment shall have exclusive jurisdiction and powers to grant a permit for a special exception use under the terms and conditions established by this chapter, under the following stipulations and guiding principles: [Amended 4-14-1983 by Ord. No. 182]**
- (1) The use for which application is being made is specifically authorized as a special exception use in Article III of this chapter for the zone in which**

11. Editor's Note: The Schedule of Lot, Yard and Building Regulations is included at the end of this chapter.

located.

- (2) The design, arrangement and nature of the particular use is such that the public health, safety and welfare will be protected, and reasonable consideration is afforded to the:

- (a) Character of the neighborhood.
- (b) Conservation of property values.
- (c) Health and safety of residents and workers on adjacent properties and in the surrounding neighborhood.
- (d) Potential congestion of vehicle traffic or creation of undue hazard.
- (e) Stated principles and objectives of this chapter and the Comprehensive Plan of the Town of Elsmere.

- B. In addition, such special exception uses shall adhere to the minimum standards specified for the particular use in § 225-28 and to such additional conditions and safeguards in the opinion of the Board of Adjustment will implement the intent and objectives of this section and chapter.

§ 225-28. Special exception uses.

- A. Public utility uses, such as water filtration plants, sewerage disposal plants, pumping stations, high-voltage transmission lines and towers, electric substations, telephone exchanges and repeater stations, but no service or storage yards, subject to the following:

- (1) Proof is furnished that the proposed installation in the specific location is necessary for the proficiency of the public utility system and that the satisfactory and convenient provision of service to the neighborhood or area in which the facility is to be located.
- (2) The design of any building or structure required for such use conforms to the general character of the area in which it is located.
- (3) Adequate fencing and landscaping will be provided and periodically maintained.
- (4) The lot on which located is sufficient in size to adequately accommodate the proposed facilities, together with any parking space required to serve the facility, together with any of the structural portions of the use or parking facilities being closer than 25 feet to adjacent properties.

- B. Churches and similar places of worship and rectories or parish houses or convents of religious groups on the same tract, subject to the following:

- (1) In addition to the material required for the application as specified in § 225-29, the application shall be accompanied by the existing or proposed charter and bylaws of the organization and such other material to guarantee to the satisfaction of the Board of Adjustment the following:

- (a) The organization is or will be a bona fide nonprofit religious group organized purely for the benefit of its membership and such other activities normally carried on by religious groups.
 - (b) The organization will not engage in sales of products or materials to the general public or otherwise engage in activities normally carried on as a business or commercial activity, except that the premises may be made available on a rental basis for groups, private social functions and the like.
 - (2) The area of the lot on which the proposed use is to be located shall have a minimum area of two acres and a minimum width of 150 feet.
 - (3) The coverage of the lot by structures will not exceed 20%.
 - (4) No building will be located within 60 feet of a street line nor within 50 feet of a side or rear property line.
 - (5) Off-street parking space shall be provided at a rate of one space for each six seats in the church building and one for each four seats in any other form of meeting room space. Such parking space shall not be located within the front yard area nor within 30 feet of a property line and shall otherwise comply with all general requirements of this chapter concerning parking areas. In addition, landscape plantings shall be provided in sufficient quantity and locations to preclude the transmission of headlight glare or other lighting to adjacent properties and to preclude view of the parking area from a public street.
- C. Public schools and private schools and institutions of higher learning operated by charitable, religious or eleemosynary organizations which are not conducted as a business subject to the following:
- (1) The site area is five acres plus one additional acre for every 100 pupils or portion thereof of maximum capacity.
 - (2) The lot coverage does not exceed 15%.
 - (3) No structure is located within 100 feet of a street or property line.
 - (4) Sufficient off-street parking space shall be provided to ensure that the use will not cause parking in a public street during the course of normal educational programs.
- D. Motor vehicle service stations.
- (1) A minimum lot area of 15,000 square feet shall be provided, together with a minimum lot width of 100 feet. In addition, if the Board of Adjustment finds that the nature of the particular use proposed, either by virtue of scale, intensity of use, potential hazard or other such considerations is such that a larger site is in the public interest, then it shall impose such additional requirement.

- (2) Such lot shall be located, within the following limitations:

 - (a) Not closer than 1,000 feet to a public or private school, hospital, church, library or other similar place of public assembly.
 - (b) Not closer than 100 feet from the intersection of any two streets designated as primary or secondary in the Comprehensive Plan.
- (3) Yard requirements, which are applicable to all pumps, mechanical equipment and other appliances in addition to the main structure, are as follows:

 - (a) Front, side and rear yard area: 25 feet.
 - (b) Maximum lot coverage: 20%.
 - (c) Maximum building height: one story.
- (4) All fuel tanks or other such containers for the storage of flammable materials, either liquid or solid, shall be installed underground at sufficient depth to ensure against hazard of fire or explosion.
- (5) Parking facilities shall be maintained as follows:

 - (a) Two square feet of space for each square foot of floor area in the primary building.
 - (b) Where such parking areas abut a residential zone, they shall be screened by a buffer area not less than 10 feet in width composed of densely planted evergreen shrubbery, solid fencing or a combination of both which in the opinion of the Board of Adjustment will be adequate to prevent the transmission of headlight glare across the zone boundary line. Such buffer screen shall have a minimum height of five feet above finished grade at the highest point of the parking area. The materials used shall be in keeping with the character of the adjacent residential area.
 - (c) Driveways to parking areas shall be limited to two for each 100 feet of frontage. Such driveways shall not be less than 12 feet nor more than 25 feet in width.
 - (d) No area on the lot which is required for the movement of vehicles in and about the buildings and facilities shall be used for complying with the parking requirements of this section.
- (6) Accessory goods for sale may be displayed out-of-doors on the pump island and building island only and shall be stored in a suitable rack or container.

E. Clubs or lodges for fraternal or social purposes operated by chartered membership organizations for the benefit of their members, and not for profit, may be permitted in the R-1, R-2 or R-GA District, subject to the following:

- (1) In addition to the material required for the application as specified in § 225-29, the application shall be accompanied by the existing or proposed certificate of incorporation and by-laws of the organization. Such material shall guaranty to the satisfaction of the Board of Adjustment the following:**

 - (a) The organization is or will be a bona fide nonprofit group organized solely for the benefit and enjoyment of its members.**
 - (b) The organization will not engage in sales of materials to the general public or otherwise engage in activities normally carried on as a business or commercial activity, except that the premises may be made available on a rental basis for meetings or other groups, private social functions and the like. The maximum membership and guest limit of the organization is fixed at a level which is commensurate with the scale of facilities to be provided. No further membership expansion will take place without prior approval of the Board of Adjustment.**
 - (c) The hours of use are fixed in a manner in which the property rights of nearby property owners will not be adversely affected.**
 - (d) All activities of the organization will be carried on within an enclosed building.**
- (2) The proposed use is located on a primary or secondary street as established by the Comprehensive Plan.**
- (3) The area of the lot on which the use is proposed shall have a minimum of two acres and is not less than 100 feet wide.**
- (4) The coverage of the lot by structures will not exceed 20%.**
- (5) No building will be located within 30 feet of any property or street line.**
- (6) Off-street parking space shall be provided, at a rate of one for each four memberships over the age of 17 permitted. Such parking space shall not be located within 30 feet of a property or street line and shall otherwise comply with general requirements of this chapter concerning parking areas. In addition, landscape plantings shall be provided in sufficient quantity and locations to preclude the transmission of headlight glare or other lighting to adjacent property.**

F. Planned unit developments in R-1 or R-2 Districts, subject to the following:

- (1) Site requirements.**

 - (a) The minimum required land area for a planned unit development shall be 40 contiguous acres.**
 - (b) The tract shall be serviced by a system of sanitary sewers, water mains, fire hydrants, storm sewers, easements and rights-of-way for**

utilities, shade trees, streetlighting and public utilities placed underground, all of which shall be constructed so as to conform with the applicable statutes, ordinances and regulations of the State of Delaware and the Town of Elsmere.

(2) **Application of Comprehensive Master Plan.** Any planned unit development shall be based on and interpreted in relation to the Comprehensive Plan for the development of the Town of Elsmere. Every application for approval of a planned unit development shall be based on and interpreted in relation to such Comprehensive Plan.

(3) **Permitted uses.**

(a) **Single-family detached dwellings.**

(b) **Townhouse.**

(c) **Apartment house.**

(d) **Common, public or private open space, park or recreation area, including playgrounds, woodland, conservation areas, walkways, trails, stream crossing and drainage control areas, golf courses, swimming pools, tennis courts, ice-skating rinks and other similar recreational uses, but which may not include any such uses or activities which produce noise, glare, odor, air pollution, fire hazard or other safety hazards, smoke, fumes or any use or activity which is operated for a profit or other things detrimental to existing or prospective adjacent structures or to existing prospective development of the neighborhood.**

(e) **Municipal, church or philanthropic use.**

(f) **Educational use.**

(g) **Model home exhibits, temporary sales and construction office and uses accessory thereto for use solely in conjunction with planned unit development in the Town of Elsmere.**

(h) **Neighborhood retail sales and service facilities.**

(i) **Accessory use on the same lot with, and customarily incidental to, any of the foregoing uses.**

[1] **In residential areas, these accessory uses include:**

[a] **Off-street parking facilities.**

[b] **Swimming pools.**

[c] **Garages.**

[d] **Storage facilities for landscape and building maintenance and equipment.**

- [2] In commercial areas, these accessory uses include:**
 - [a] Off-street parking facilities.**
 - [b] Off-street loading facilities.**
 - [c] Garages for vehicles necessary for the proper functioning of commercial operations.**
 - [d] Storage areas for trash and refuse.**

(4) Area design standards.

- (a) Area limitations for various uses. Within a planned unit development, the following percentage of the total land area shall be devoted to the specific uses:**

- [1] A maximum of 80% for the residential uses and other uses permitted in Subsection F(3) above, excluding the open space and recreation uses in Subsection F(3)(d), and the space devoted to streets and parking within and exclusively servicing such open space or recreation use. Said maximum shall include all of the recreational, playground and athletic activity areas which are part of a school site.**
- [2] A minimum of 20% for common or public open space and recreational uses as defined in Subsection F(3)(d) above. This area shall include space devoted to streets and parking, provided that such facilities are within and service exclusively an open space or recreation area.**
- [3] A maximum of 5% for neighborhood retail sales and service facilities, but in no event to exceed 10 acres. Said maximum shall include the parking and service areas exclusively servicing such facilities.**

- (b) Design standards. The following minimum requirements shall apply:**

- [1] Area, width, height and yard regulations.¹²**
- [2] Additional requirements that apply to townhouses:**
 - [a] There shall be no continuous group of townhouses consisting of more than eight dwelling units.**
 - [b] For the purpose of avoiding developments resembling what have been customarily referred to as "row houses," there shall be within any continuous group of townhouses at least three different architectural plans having**

12. Editor's Note: See the Schedule of Lot, Yard and Building Regulations included at the end of this chapter.

substantially different designs, building materials and exterior elevations. In addition, no more than three continuous townhouses shall have the same front setback, and the variations in front setbacks shall be at least four feet.

- [c] Notwithstanding the requirements of Subsection F(4)(b)[1] above, no group of townhouses shall be closer than 60 feet as to facing walls and 30 feet as to end walls, from any other group of such dwellings, nor closer than 60 feet from any boundary line of a designated townhouse area of which the group is a part.
 - [d] The minimum width of any side yard abutting a street, driveway or parking area within the townhouse area shall not be less than 30 feet.
- [3] Additional requirements that apply to apartment houses:
- [a] Notwithstanding the requirements of Subsection F(4)(b)[1] above, no apartment house shall be closer than 60 feet from any other apartment house, nor closer than 80 feet from any boundary line of the designated apartment house area of which the apartment house is a part.
- [4] Off-street parking requirements. Adequate parking areas shall be provided for townhouses and apartment houses within the areas designated for the same, and there shall be at least two parking spaces, each 10 feet by 20 feet minimum in size, per dwelling unit, in addition to the driveways, roadways, turning and access areas within the designated housing area.
- [5] Location of structures. The proposed location and arrangement of structures shall not be detrimental to existing or prospective development of the neighborhood.
- [6] Protection of open spaces. All recreation areas designated on the development plan shall be improved and equipped initially by the developer in accordance with plans approved by the Planning Commission and shall be protected by adequate covenants running with the land or by conveyances or dedications of same to the Town of Elsmere as the Town Council shall determine.
- [7] Open space and recreation areas shall be designed to be primarily for the benefit of the residents of the planned unit development, and to this end the developer shall have as many dwelling units (all types) as is feasible abut or be near an open space area.

(1) **Tract requirements.**

(a) **A tract under single ownership of an area and of dimensions not less than those prescribed by the appropriate district schedule shall be required for a cluster development. The tract may be divided by an**

existing public street which may be retained as a part of the plan for the development or relocated in accordance with an approved site plan. The minimum yard requirements of the schedule shall apply only to the periphery of the tract.

- (b) There shall be no access from the tract to existing public roads other than by interior streets at minimum intervals of 400 feet, and no dwelling unit shall front upon a collector or arterial street incorporated into or created within a planned residential development.
 - (c) Every dwelling unit shall be connected to and properly served by public water and public sanitary sewer and by a storm drainage system.
 - (d) All improvements within a cluster development shall be installed in accordance with an approved site plan and with the specifications of the Subdivision Regulations of the Town of Elsmere.¹³
 - (e) The gross density of the project shall not exceed the maximum units per acre permitted by the appropriate district schedule.
- (2) Only single-family detached dwellings shall be permitted within a cluster development.
- (a) All accessory uses permitted with single-family dwellings by the appropriate district schedule shall be permitted with single-family detached dwellings within a cluster development.

(3) Lot area and dimensions for single-family detached units.¹⁴

	District R-1 or R-2
Minimum lot area	5,000 square feet
Minimum average lot area	6,000 square feet
Minimum lot width	50 feet
Minimum average lot width	60 feet
Minimum lot depth	80 feet
Minimum	20 feet

13. Editor's Note: See Ch. 196, Subdivision and Land Development.

14. Editor's Note: See the Schedule of Lot, Yard and Building Regulations included at the end of this chapter.

front yard	
Minimum side yard:	
One	5 feet
Both	10 feet
Minimum rear yard	30 feet
Maximum lot coverage	20%

- (4) **Open space.** All land not included within lots to be conveyed or utilized for required improvements shall be deeded to the Town or shall be reserved by a covenant in favor of the municipality or by grant of easement providing that it shall be set aside in perpetuity for the use of residents of the development or it shall be deeded to a homeowners' association, as the Council shall elect, by written instrument to be approved by them. If the Town Council elects to approve a conveyance to a homeowners' association, the landowner shall so organize it that it may not be dissolved, nor dispose of the open space by sale or otherwise (except to an organization conceived and established to own and maintain it) without first offering to dedicate it to the Town. Such organization shall be subject to the approval of the Council.
- (a) The area to be dedicated for public use shall be so located and of such a shape to be acceptable to the Town Council. In determining the acceptability of proposed open space, the Town shall consider future Town needs and may require a portion of open space to be designated as the site of a potential future public use, provided that not more than 25% of all available open space shall be taken for public buildings.
 - (b) All open space area shall be graded and seeded by the developer during the course of construction unless the Town Council approves or directs the maintaining of all improvements, in which case it will be disturbed only as necessary to make the specified improvements.
 - (c) **Streets or off-street parking areas.** The Town Council may require all streets within the tract which do not directly implement the proposals of the Comprehensive Plan or Official Map and do not provide a direct connection between existing streets outside the tract, to be transferred to the ownership of the homeowners' association for maintenance and repairs. Wherever reverse planting strips, medial grass strips or other landscaped areas are proposed which will be visible to the general public within the development, covenants and/or agreements shall provide for the maintenance of such areas by the homeowners' association even though they may be upon land subdivided into lots.

- (d) No single area of less than three acres in size shall be dedicated for public use, unless, due to special conditions that are peculiar to the particular parcel of land or to the public purpose for which the land is to be used, dedication of a smaller area is authorized by the Town Council.
- (e) Open space areas may be used as park, playground or recreation areas, including golf courses, swimming pools, equestrian trails and centers, tennis courts, shuffleboard courts, basketball courts and similar facilities; woodland or stream conservation areas; pedestrian walkways, stream-course or drainage control areas; children's nursery or day-care center; or any similar use of benefit to the residents of the development if in the ownership of a homeowners' association or the Town if dedicated to and accepted by the Town and deemed appropriate by the Town Council.

H. Motels, motor courts or hotels may be permitted in the HD District, providing:

- (1) The area to be occupied for such use shall be not less than three acres and no rental structure or part thereof shall be placed closer to a street line than 100 feet or closer to any property line than 50 feet.
- (2) Wherever located, a motel, motor court or hotel shall conform to the following additional requirements:
 - (a) Each rental structure shall contain not fewer than 20 rental units.
 - (b) One off-street parking space per rental unit shall be provided and the automobile parking lot shall conform with § 225-10C; no part thereof shall be closer to any street line than 70 feet.
 - (c) Each rental unit shall be supplied with a toilet and hot running water.
 - (d) Sanitary facilities and water supply shall be approved by the State Division of Environmental Protection and any other appropriate governmental agency.

I. Convalescent homes.

- (1) Off-street parking shall be in other than the required front yard area and shall be not closer than 25 feet to a property line other than a street line. Parking areas shall be provided with illumination. All outdoor illumination shall be so arranged, shielded or otherwise restricted to protect adjacent properties from glare or reflection.
- (2) Any outdoor storage of trash, laundry, oxygen tanks or other waste supplies shall be fully enclosed by a fence or wall at least six feet in height.
- (3) One externally illuminated identification wall sign may be erected on one facade of the building, provided that the sign shall not exceed an area equal to 10% of the area of the facade upon which it is created. And

either one comparable identification wall sign, subject to the same regulations, may be erected on each of up to three additional facades of the building, whether or not such facades face a public thoroughfare; or one externally illuminated identification projecting sign which does not exceed 20 square feet in area on either side may be erected on one side of the building. Additionally, one externally illuminated ground directional sign may be erected at each driveway. Such signs shall not exceed four square feet in area or two feet in height above ground level, shall not be closer than 15 feet to a property line or more than five feet from a driveway. Such signs shall be limited to directions to parking, marking entrances or exits, denoting restricted parking areas or marking emergency entrances.

- (4) Driveways shall not be closer than 20 feet to any property line other than a street line and shall not be wider than 30 feet at the street line. Two driveways shall be not closer to each other than 75 feet.¹⁵

§ 225-29. Application procedure.

- A. Any person seeking a permit for any special exception use shall first make application in the form described by Subsection D to the Building Official for a special use permit.
- B. The Building official shall forward the file to the Board of Adjustment for its consideration. A copy of the file shall also be forwarded to the Planning Commission of the Town of Elsmere for a review of the site plan and for an evaluation of the proposed special exception use and its relationship and conformity to the goals and objectives and policies established by the Comprehensive Plan. The Planning Commission shall, within 30 days after receipt of such application, make a written report to the Board of Adjustment setting forth its findings and recommendations concerning the application. In its review, the Planning Commission shall grant the applicant and other interested parties the right to be heard. In its recommendations, the Planning Commission may suggest any revisions to the site plan, landscaping plan or other plans as will, in its opinion, cause the proposed special use to be substantial conformance with the Comprehensive Plan and its principles of land use and development.
- C. The Board of Adjustment shall approve or deny such application in accordance with the time limits provided by law. In approving any such applications, the Board of Adjustment may impose any modifications or conditions it deems necessary to carry out the intent of this chapter or to protect the health, safety or welfare of the community. If an application is approved, the Building Official shall be empowered to issue a building permit upon request of the applicant in accordance with the terms and conditions of the Board's approval.

15. Editor's Note: Former Subsection J, Townhouses, which previously followed this subsection, was deleted 10-13-1994 by Ord. No. 312.

D. The application and all supporting documents shall be made in triplicate and shall include the following plans and information:

- (1) The location, use, design, dimensions and height of each proposed building or structure.**
- (2) The location and arrangement of vehicular accessways and location, size and capacity of all areas to be used for off-street parking, loading and unloading.**
- (3) The location and dimensions of sidewalks, walkways and all other areas to be devoted to pedestrian use.**
- (4) The design and treatment of open areas, recreation areas, buffer areas and screening devices to be maintained, including dimensions of all areas devoted to planting lawns, trees or other landscaping devices.**
- (5) Provisions for water supply, storm drainage and sewer disposal.**
- (6) Sufficient data to indicate the effects of the proposed use development in producing traffic congestion and safety hazards and sufficient additional data to enable the Board of Adjustment of the Town of Elsmere determine compliance with the design requirements set forth in this and other pertinent sections of this chapter.**

§ 225-30. Variances in Floodplain Districts. [Added 1-13-1977 by Ord. No. 124]

A. The Board of Adjustment shall have original jurisdiction and powers to recommend to the Town Council the granting of a variance from the community's floodplain management regulations, provided that such variance is in harmony with, and preserves the spirit of, the general purpose and intent of these regulations.

B. Any person seeking a variance shall first make application in the form described in § 225-11, Permit requirements, to the Building Official. The Building Official shall forward the file to the Board of Adjustment for its consideration. The following procedure shall be followed in considering the granting of variances:

- (1) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that:**
 - (a) Variances shall only be issued upon a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship to the applicant and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances;**

- (b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
 - (c) The Building Official shall notify the applicant in writing that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of the insurance coverage, and such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in Subsection B(1)(d) below; and
 - (d) The Building Official shall maintain a record of all variance actions, including justification for their issuance and report such variances issued in its annual report submitted to the Federal Insurance Administrator.
- (2) No variance shall be granted for any construction, development, use or activity within any floodway area that would cause any increase in the one-hundred-year-flood elevation. [Added 7-9-1987 by Ord. No. 213]
- C. Variances may be issued by the Building Official for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in this section.

ARTICLE VI
Nonconforming Uses

§ 225-31. Continuance. [Amended 1-13-1977 by Ord. No. 124]

- A. Except as otherwise provided in this article, the lawful use of land or buildings existing at the date of the adoption of this chapter may be continued although such use or building does not conform to the regulations specified by this chapter for the zone in which such land or building is located; provided, however:
 - (1) That no nonconforming lot shall be further reduced in size.
 - (2) That no nonconforming building shall be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance. In the Floodplain District no nonconforming building shall be expanded unless the applicant has demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
 - (3) That no nonconforming use may be expanded.

§ 225-32. Abandonment.

A nonconforming use shall be adjudged as abandoned when there occurs a cessation of any use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of three months from the date of cessation or discontinuance.

§ 225-33. Restoration. [Amended 1-13-1977 by Ord. No. 124; 4-10-1990 by Ord. No. 247]

If any nonconforming building shall be destroyed by reasons of windstorm, fire, explosion or other act of God or the public enemy to an extent of less than 50% of the recorded true valuation, then such destruction shall be deemed partial destruction and may be rebuilt, restored or repaired within one year from the date of the destruction. If such a structure is located within the Floodplain District, the development regulations cited in § 225-22B shall be utilized to the greatest extent possible. Provided, however, that if such a structure is located within the floodplain, as that area is defined in § 225-22A(1), then the requirements of § 225-22B(1)(d), as amended, must be satisfied, notwithstanding the destruction of less than or more than 50% of the recorded valuation of the structure. Nothing in this chapter shall prevent strengthening or restoring to a safe condition any wall, floor or roof which has been declared unsafe by the Building Official.

§ 225-34. Reversion.

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

§ 225-35. Alterations. [Amended 1-13-1977 by Ord. No. 124]

A nonconforming building may be remodeled but not enlarged or extended, unless said building is changed to a building conforming or more nearly conforming to the requirements of this chapter. In the Floodplain District, until a regulatory floodway is designated, no enlargement or extension or remodeling which would be considered a substantial improvement shall be permitted unless the applicant has demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

§ 225-36. Zone changes.

Whenever the boundaries of a zone shall be changed so as to transfer an area from one zone to another of a different classification, the foregoing provision shall also apply to any nonconforming uses existing therein or created thereby.

§ 225-36.1. Nonconforming use permit. [Added 4-13-2000 by Ord. No. 383]

- A. Whenever any person with an actual or potential interest in any land or building that is a nonconforming use as defined in this article shall need to determine whether a proposed use of such land or building would be permitted, such person may apply to the Board of Adjustment for a nonconforming use permit. Any person who obtains a nonconforming use permit under the procedures provided for by this subsection shall be entitled**

to rely upon such permit as a defense to any claim that the use so permitted violates the Town of Elsmere Zoning Code.

- B. The procedures and rights of appeal provided for other proceedings before the Board of Adjustment under Article VIII of this chapter shall be equally applicable as far as practical to any determination of an application for a nonconforming use permit.
- C. Whenever the Board of Adjustment hears an application for a nonconforming use permit, the Town Solicitor must be present at said hearing.
- D. The fee to be paid at the time an application for a nonconforming use permit is filed shall be \$200 for a residential property and \$500 for a commercial property. In addition, all petitions shall provide for a deposit of \$500 at the time of application. Town attorney's fees related to the petition will be deducted from this \$500. Any remaining balance shall be returned to the petitioner upon resolution of the petition.¹⁶

ARTICLE VII Sign Regulations

§ 225-37. Signs.

- A. **Definitions.** As used in this section, the following terms shall have the meanings indicated: [Amended 12-8-1992 by Ord. No. 291; 5-30-1996 by Ord. No. 326]

BANNER — A sign intended to be hung either with or without frames, mounted on a wall or a pole, that is constructed of a lightweight paper, fabric, canvas, plastic or similar material. National, state, municipal or institutional flags or the official flag of any business shall not be considered a "banner."

BUILDING SIGNS — These shall be placed on the vertical wall or portion of a building and shall not extend beyond the wall or portion in any direction.

FLAG — A rectangular fabric, banner or bunting, containing distinctive colors, patterns or symbols used as a symbolic representation of a government, political subdivision or other entity. "Flags" may contain logos and other symbolic representations of businesses or other entities, but shall not include statements or commercial messages of any kind.

FREESTANDING SIGNS — These shall be independently supported and firmly fixed to the ground.

HARMFUL TO MINORS — The quality of any description or representation, in whatever form, of nudity, sexual contact, sexual excitement or sadomasochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of minors, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors and is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for any

¹⁶. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

reasonable minor.

PENNANT — A lightweight plastic, fabric or other material, whether or not containing a message or lettering of any kind, usually designed to taper to a point, suspended from a rope, wire or string, often in a series and intended to move in the wind.

B. Use regulations. The following sign uses, and no other, are permitted:

- (1) Professional, accessory use or name signs indicating the profession or activity of the occupant of a dwelling or signs indicating the private nature of a driveway or property, provided that not more than two such signs shall be located along one road frontage and that the total combined area on one side of such sign or signs shall not exceed two square feet. These signs shall be of the freestanding type.**
- (2) Identification signs, announcement signs or bulletin boards relating to a church, school, hospital, municipal building, club or similar public, charitable or religious institution or buildings, provided that the area on one side of any such sign shall not exceed 12 square feet, each sign shall be located on the lot of the institution or use to which it relates, not more than one sign shall be placed on any street frontage of any one property and such sign will contain nothing of an advertising nature. In addition, such institutions, as defined above, may place on its building identification signs, provided that not more than one such sign shall face on any street frontage and the gross area of such a sign shall not exceed 5% of the face of the building on which it is mounted.**
- (3) Business signs or signs which primarily direct attention to the identity of business, profession, industry, laboratory or similar activity and which may describe in general the nature of the activity conducted on the property on which the sign is located may be erected in the General Industrial District, Highway Development District and the Community Commercial District. Such signs shall not exceed two in number on any one road frontage, and the total area on one side shall be 24 square feet. No sign shall be placed within 20 feet of the street line. However, for signs set back further than 10 feet, then 10 square feet of area can be added for each additional 10 feet of set back.**
 - (a) Building identification signs may be used, but only one such sign shall face on any street frontage, and the gross area of such sign shall not exceed 5% of the face of the building on which it is attached.**
 - (b) For buildings occupied by more than one enterprise, a combined sign may be installed identifying the occupants. The total area on one side of the sign shall not be more than 24 square feet, with 10 square feet added for each added occupant.**
 - (c) Building identification signs may be used on the portions occupied**

by each occupant, but all such signs together shall not be greater in area than 5% of the area of the face of the building on which they are placed.

- (4) Official signs, erected by a public authority or public utility, such as but not limited to highway signs, railroad crossing, danger and any other sign that may be required by a governmental or public utility authority or agency in connection with the identification, operation or protection of property or activity.
- (5) Warning signs may be placed by property owners to warn of dangers, such as but not restricted to hidden driveways, cattle crossings, traffic directions on private drives, et cetera, but such signs shall not be greater than one square foot on any one side.
- (6) Real estate signs relating to the advertising of individual properties for sale or rent may be placed on the property, but shall not be greater than three square feet. No more than one sign shall be placed on a property by any one real estate organization. The signs shall be removed promptly when the properties are sold. Advertising signs of development of 10 or more approved lots may be placed on the development, but the total area of one side of all signs shall not be more than 24 square feet with three added square feet for each additional 10 approved lots. These signs shall be removed promptly when the properties are sold.
- (7) Directional signs relating to a use located in the Town may be erected off the property of use. These signs shall not include more than the name, direction and nature of the business or activity referred to. Each sign shall have not more than two square feet on one side, and not more than two shall be erected for any one activity. Directional signs for activities outside the Town will not be allowed within the Town.
 - (a) Real estate directional signs for a development within the Town may have an area on one side of not more than two square feet and may carry only the name of the development, the developer or agent and a direction.
 - (b) These signs may be erected for developments of 10 lots or more. There shall be not more than two directional signs erected on any one road leading to the development, and not more than 10 signs may be erected in the Town.
- (8) Legal notices, such as but not limited to signs used to "post" property to prevent trespassing, hunting, trapping, etc., are permitted.
- (9) Public announcements to advertise public benefits of churches, fire companies, other public charitable or religious events and also public sales of an individual's household goods, farm equipment, stock or property are permitted, provided that the event is held within the Town, the notices are not posted for more than three weeks prior to the event

and the notices are removed within 48 hours following the event.

- (10) Farmers' signs advertising the sale of farm products produced within the Town may be erected, provided that not more than two signs are erected, the area on one side of a sign shall not be more than six square feet, and the sign shall be removed or kept in good condition during seasons when products are not being offered for sale.
- (11) Banners, pennants and noninstitutional flags. [Added 12-8-1992 by Ord. No. 291]

 - (a) Banners, pennants and noninstitutional flags shall be permitted under the following conditions:

 - [1] Pennants shall be permitted to control ingress or egress to undeveloped property or property under construction or to designate restricted areas within such property, for properties under construction or repair or for purposes of public safety. No sign permit shall be required. Otherwise, pennants shall not be permitted.
 - [2] Banners shall be permitted in Community Commercial, Highway Development or General Industrial Zones for advertising a special sales event, grand openings, holidays or similar activities if attached to a wall.
 - (b) Permits for banners shall be issued only under the following conditions:

 - [1] No permit shall be issued for a period longer than two weeks.
 - [2] A request for an extension of the permit for a maximum of an additional two weeks can be approved at the discretion of the Town Manager; provided, however, that there have been no valid complaints regarding the display during the initial permit period.
 - [3] No more than four permits (with extensions where approved) shall be issued in any given calendar years to a single business or site.
 - [4] Maximum banner size and number shall be determined as follows:

 - [a] No combination of approved permanent signage and banners on a building facade shall be greater in area than 10% of the area of the face of the building on which they are placed.
 - [b] Banners on walls shall not be combined with flags or freestanding banners.

[c] In the case of a property or business facing more than one street, banners shall be permitted only so that no combination of approved permanent signage and banners on either building facade shall be greater in area than 7.5% of the area of the face of the building on which they are placed.

[d] In the case of businesses in shopping centers, the calculation shall be based on the facade of the specific business as rented.

[5] Noninstitutional flags and/or freestanding banners attached to poles shall be permitted so long as they do not contain statements or commercial messages of any kind; such flags shall be set back five feet; only one flag or banner shall be permitted on any street frontage for a property facing more than one street; the maximum area for any flag or freestanding banner shall not exceed 20 square feet; noninstitutional flags or freestanding banners shall not be combined with wall banners; a permit is required for each flag or freestanding banner, under the same issuance and time limitations described above in Subsection B(11)(b)[1] and [2].

§ 225-38. General restrictions on sign uses.

A. The following restrictions shall apply to all sign uses:

- (1) No sign shall be erected so that the top of the sign is more than 20 feet above the ground.**
- (2) No sign shall be attached to trees, fence posts, stumps, utility poles, bridges, culverts or other signs, but shall be freestanding or attached to buildings in an approved manner, except that this restriction shall not apply to legal notices and public announcements [as defined in § 225-37B(8) and (9)] which may be so affixed.**
- (3) No sign shall be exhibited in the Town which is portable, i.e., fixed on a movable stand, or is self-supporting without being firmly embedded in the ground or which is supported by other objects or is mounted on wheels or movable vehicles or made easily movable in some other manner.**
- (4) No sign shall be displayed which basically directs attention to a product or group of products or service or group of services rather than primary attention to the identity of the business operation. This restriction shall include billboards.**
- (5) No signs shall be placed in such position along a highway or street or at an intersection so as to cause danger to traffic by obscuring the view.**
- (6) Signs may be illuminated, but such illumination shall be of white light,**

either direct or diffused.

- (7) No sign shall be a flashing, moving, rotating, oscillating or similar type. In no cases shall buildings or structures be outlined by tubing or strings of lights for advertising purposes.¹⁷
- (8) All signs must be constructed of durable materials and kept in good condition. Whenever a sign, pennant, banner or flag becomes dilapidated, faded, torn or structurally unsound, endangers public safety or property or loosens from its mountings, such sign must be removed or repaired to the satisfaction of the Code Enforcement Officer by the owner or the property owner within five days of notification. [Amended 12-8-1992 by Ord. No. 291]
- (9) No sign, pennant, banner or flag that is harmful to minors shall be permitted.¹⁸ [Added 12-8-1992 by Ord. No. 291]

ARTICLE VIII Administration

§ 225-39. Certificates and permits.

- A. **Certificate of occupancy.** Certificates of occupancy shall be issued by the Building Official. On serving of notice to the owner of any violation of any of the provisions or requirements with respect to any building or use thereof or of land, as specified in this chapter, the certificate of occupancy for such use shall be deemed to be in violation of this chapter and subject to the penalties hereinafter prescribed. A new certificate of occupancy shall be required for any further use of such land or building. No certificate of occupancy shall be granted, however, for dwelling space in which the majority of square footage of habitable space is subject to flooding in the floodplain, as that area is defined in § 225-22A(1). [Amended 4-10-1990 by Ord. No. 247]
- B. **Records.** It shall be the duty of the Building Official to keep a record of all applications for building permits, a record of all permits issued and a record of all certificates of occupancy, together with a notation of all special conditions involved. He shall file and safely keep copies of all plans submitted, and the same shall form a part of the records of his office and shall be available for the use of the officials of the Town of Elsmere. The Building Official shall prepare a monthly report for the Town Council, Building Committee and Planning Commission summarizing for the period since his last report all building permits issued and certificates a countersigned by him. A copy of each such report shall be filed with the Tax Assessor at the time it is filed with the Town Council, Building Committee and Planning Commission. [Amended 10-11-1979 by Ord. No. 143]

17. Editor's Note: Former Subsection A(8), regarding temporary signs, which previously followed this subsection, was repealed 12-8-1992 by Ord. No. 291.

18. Editor's Note: Former Section 803, Scheduled regulations, consisting of the Schedule of Sign Regulations, which previously followed this subsection, was deleted 5-30-1996 by Ord. No. 326.

§ 225-40. Board of Adjustment.

A. The Board of Adjustment shall consist of five persons who shall be residents of the Town of Elsmere and who shall have knowledge of the problems of urban and rural development and who, at the time of their appointment and throughout the term of their office, shall not be candidates nor members for elective office in the Town of Elsmere, nor employees of the Town of Elsmere. The Mayor of Elsmere shall appoint such members of the Board of Adjustment and all such appointments shall be confirmed by a majority vote of the elected members of the Council. Upon the effective date of this chapter, the Mayor shall reappoint the existing three members as follows, one for three years, one for two years and one for one year. He shall appoint two new members as follows, one for two years and one for one year. Thereafter, each new member shall serve for three years or until his successor has been appointed. [Amended 9-12-1974 by Ord. No. 114; 2-13-1988 by Ord. No. 227; 8-11-1994 by Ord. No. 309]

(1) The Board of Adjustment shall have the following powers:

- (a) To hear and decide appeals where it is alleged there is an error in any order, requirement decision or determination made by an administrative official in the enforcement of appropriate laws and codes of the State of Delaware and any amendment thereto or of this chapter.**
- (b) To hear and decide special exceptions to the terms of this chapter upon which the Board is required to pass under this chapter.**
- (c) To authorize upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done.**
- (d) In exercising the above-mentioned powers, may reverse or affirm, wholly or partially or may modify the order of requirement, decision or determination appealed from and may make such order, requirement, decision or determination as, in its opinion, ought to be made. Notices of such decision shall forthwith be given to all parties in interest.**

B. Meetings.

- (1) Meetings shall be held at the call of the Chairman and at such times as the Board may determine.**
- (2) All meetings of the Board shall be open to the public.**
- (3) Minutes of meetings shall show the vote of each member upon questions or, if absent or failing to vote, the indication of such fact. The Board shall**

also keep a record of its examinations and other official actions, all of which shall be filed in the office of the Clerk of the Board and shall be a public record.

- (4) The Chairman or, in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses.
- C. Appeals. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality affected by any decision of the Building Official and Building Committee. Such appeals shall be taken within a reasonable time as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer or committee from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. [Amended 10-11-1979 by Ord. No. 143; 12-8-1988 by Ord. No. 235]
- D. An appeal stays all proceedings in furtherance of the action in respect of which the decision appealed from was made, unless the officer or Committee from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him or the Committee, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by action of the Board of Adjustment or by a court of competent jurisdiction on application on notice to the officer or Committee from whom the appeal is taken and on due cause shown. [Amended 10-11-1979 by Ord. No. 143]
- E. (Reserved)¹⁹
- F. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal. The Board of Adjustment shall give public notice, as well as due notice to the parties in interest, of the time of the hearing of the appeal and the time of the hearing of the Town Planning Commission regarding the appeal application. Any party may appear in person, by agent or attorney, at the appeal hearing or the hearing before the Town Planning Commission, or both. [Amended 4-8-1999 by Ord. No. 373]
 - (1) The Town shall thereupon, at least 10 days prior to the time appointed for the earlier of the appeal hearing or the hearing of the Town Planning Commission, give personal notice of the time of the appeal hearing before the Board of Adjustment and the time of the hearing on the appeal application by the Town Planning Commission to all property owners within 200 feet of the property to be affected by said appeal. Such notice shall be given either by handing a copy thereof to the said property owners or by leaving a copy thereof at the usual place of abode of said

19. Editor's Note: Former § 225-40E, as amended, which contained fees for appeals, was repealed 9-14-2000 by Ord. No. 386. See now Schedule A, Fees, at the end of this chapter.

property owners, if said property owners are the occupants of the property affected by such appeal or are residents of the Town of Elsmere.

- (2) Whenever said owners are nonresidents of said municipality, such notice may be given by sending written notice thereof by registered or certified mail to the last known address of the property owner or owners, as shown by the most recent tax lists of said municipality.
 - (3) Where the owner is a partnership, service upon any partner as above outlined shall be sufficient.
 - (4) Where the owner is a corporation, service upon any officer, as above set forth, shall be sufficient.
 - (5) The appellant shall by affidavit present satisfactory proof to the Board of Adjustment at the time of the hearing that said notices have been duly served as aforesaid.
- G. Whenever an appeal is taken pursuant to this chapter, the Board of Adjustment shall refer a copy of the application and all pertinent data to the Town Planning Commission, which Commission shall submit a report to the Board of Adjustment with respect to the effect which approval of the application would have upon the comprehensive planning and the Comprehensive Plan of the Town of Elsmere. The Board of Adjustment shall not make a recommendation on such an appeal until such report is received or until 30 days have passed since referral to the Planning Commission.
- H. Whenever an appeal shall be taken to the Board of Adjustment under the provisions of this chapter, said Board shall render its decision upon such appeal within 30 days from the date of hearing of such appeal and, in any event, within 60 days from the date of the filing of the appeal as herein provided, and, upon failure to do so, such appeal at the expiration of such time shall be deemed to be decided adversely to the appellant in such same manner as though the said Board had rendered a decision to that effect.
- I. Any exception or variation from this chapter granted by the Board of Adjustment to an application shall expire by limitation if no construction, alteration or conversion has been commenced within one year from the date of granting such variation or exception, if no building permit is issued.
- J. Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment or any taxpayer or any officer, department, board or bureau of the Town may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board.²⁰

20. Editor's Note: Former Section 703, Enforcement, as amended, which immediately followed this subsection, was repealed 8-11-1994 by Ord. No. 309.

§ 225-41. Violations and penalties. [Amended 10-13-1992 by Ord. No. 289]

- A. No person shall erect, construct, reconstruct, alter, convert, maintain or use any building or structure or use any land in violation of this chapter or any change thereof or shall refuse or fail to comply with an order of the Building Official or an order of the Board of Adjustment.**
- B. Whoever commits, takes part in, aids or assists in violating any provision of this chapter or an order of the Building Official or an order of the Board of Adjustment shall be fined not more than \$100 or imprisoned not more than 30 days, or both.²¹**
- C. Each and every day during which such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use continues shall be deemed a separate offense.**
- D. In addition to the remedies set forth herein, the Building Official or the Board of Adjustment or other officials of Town of Elsmere so authorized may institute any appropriate action or proceeding to prevent the occupancy of the building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.**

§ 225-42. Amendments.

- A. The Town Council may from time to time amend, change, modify or repeal any regulations, limitations and restrictions of this chapter, including the Zoning Map. No such amendment, change, modification or repeal shall be adopted until after a public hearing is held thereon by the Town Council at which parties in interest and citizens shall have an opportunity to be heard. In addition to the notice required by law, notices of such hearing shall be mailed to every civic association or association of residents in the Town which shall have registered its name and address for this purpose with the Town Clerk. Failure to give such notices by mail shall not, however, invalidate any such amendment, change, modification or repeal. No amendment or change shall become effective unless the ordinance proposing such amendment or change shall first have been submitted to the Planning Commission for approval or disapproval or suggestions, and the Planning Commission shall have 30 days after the formal submission of the proposed amendment or change for consideration and report. In the case of an unfavorable report by the Planning Commission, such amendment or change shall not become effective except by a favorable vote of 3/4 of the Town Council.**
- B. The Town Council may, from time to time upon the recommendation of the Planning Commission after public notice and hearing, amend, supplement or change the regulations and districts herein established and adopt rules and regulations for the purpose of interpreting and carrying this chapter into effect. When owners of more than 50% of the frontage within a district or part**

21. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

of a district comprising not less than one block shall present to the Town Council a duly signed petition for the change, relocation or revision of said district or part of district, the Town Council shall act upon said petition within 30 days after the filing of said petition with the Town Clerk. Said petition shall be accompanied by a map showing the area for which the change of district is asked and all immediately abutting property and uses thereof, and, further, shall be accompanied by a statement setting forth the grounds or reasons for the proposed change. All such proposed changes of ordinance or relocation of districts shall be referred by the Town Council to the Planning Commission. In the event of unfavorable report from the Planning Commission or in case of protests against such proposed change, signed by owners of 20% or more either of the area of the lots or land included in such proposed change or of the lots or land in the rear thereof extending 100 feet therefrom or of the lots of land on either side thereof or directly opposite thereto extending 100 feet therefrom (exclusive of street space), such change shall not become effective except by the favorable vote of 3/4 of all the members of the Town Council.

- C. A petition for change, relocation or revision of a district or part of a district shall be accompanied by a filing fee in the amount of \$500 payable to the Town of Elsmere. [Added 9-12-1974 by Ord. No. 114; amended 2-12-1991 by Ord. No. 269]

§ 225-43. Construction prior to approval.

Any building permit heretofore issued pursuant to any ordinance which provided for the erection of a building or structure in conformity to the ordinance or ordinances to which this is an amendment and supplement shall continue in full force and effect, provided that the holder has substantially undertaken such construction on the date of this chapter



Ordinance Number 459

**AN ORDINANCE ESTABLISHING RULES AND REGULATIONS INTENDED
TO PROHIBIT THE DISCHARGE OF MATERIALS OTHER THAN STORM WATER
INTO THE INLETS, STORM DRAINS AND WATER COURSES THROUGHOUT THE
TOWN**

Proposed By: **Councilman John Pasquale, 6th District Councilman**

First and Second Reading:

November 10, 2005 Council Meeting:

Results: Passed

Third and Final Reading as well as a Public Hearing:

December 08, 2005 Council Meeting:

Results: _____

ORDINANCE 459

AN ORDINANCE REGULATING THE ILLICIT DISCHARGES INTO AND CONNECTIONS TO THE TOWN'S STORM WATER SYSTEM

WHEREAS, The town is required to establish an ordinance prohibiting the discharge of materials other than storm water into the inlets and storm drains throughout the town.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

SECTION 1. PURPOSE/INTENT:

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Elsmere through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user;
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system.
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

SECTION 2. DEFINITIONS:

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: employees or designees of the Town of Elsmere including but not limited to, the Town Manager and Code Enforcement Officers of the town.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Activities subject to NPDES Construction Permits. Currently these include

construction projects resulting in land disturbance of 5 acres or more. Beginning in March 2003, NPDES Storm Water Phase II permits will be required for construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section X of this ordinance.

Illicit Connections. An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

Person. means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Pollution Prevention Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm water, Storm water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Town. The Town of Elsmere Delaware a municipal corporation located in New Castle County, Delaware and any of its officers and employees or their designee.

Wastewater means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

SECTION 3. APPLICABILITY:

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION:

The Code Enforcement Department shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Town Manager to persons or entities acting in the beneficial interest of or in the employ of the Town.

SECTION 5. SEVERABILITY:

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6. ULTIMATE RESPONSIBILITY:

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

SECTION 7. DISCHARGE PROHIBITIONS:

A. Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
- (2) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- (3) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- (4) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

B. Prohibition of Illicit Connections:

- (1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

SECTION 8. SUSPENSION OF MS4 ACCESS:

Suspension due to Illicit Discharges in Emergency Situations

The Code Enforcement Office may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

SECTION 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES:

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Code Enforcement Office prior to the allowing of discharges to the MS4.

SECTION 10. MONITORING OF DISCHARGES:

A. Applicability.

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities.

(1) The Code Enforcement Officers shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(2) Facility operators shall allow the Code Enforcement Officers ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The Town shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The Town has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the ___Town and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the Town access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

(7) If the Town has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 11. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES:

The Town will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 12. WATERCOURSE PROTECTION:

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive

vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 13. NOTIFICATION OF SPILLS:

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town of Elsmere within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

SECTION 14. ENFORCEMENT:

A. Notice of Violation.

Whenever the Town finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

SECTION 15. APPEAL OF NOTICE OF VIOLATION:

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 10 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

SECTION 16. ENFORCEMENT MEASURES AFTER APPEAL:

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within __ days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

SECTION 17. COST OF ABATEMENT OF THE VIOLATION:

Within 10 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments and shall also include per annum interest on the total amount due, computed on the basis of the amortized amount outstanding at the rate provided by 6 Del. C. Section 2301.

SECTION 18. INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

SECTION 19. COMPENSATORY ACTION:

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

SECTION 20. VIOLATIONS DEEMED A PUBLIC NUISANCE:

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

SECTION 21. CRIMINAL PROSECUTION:

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$200.00 dollars per violation per day and/or imprisonment for a period of time not to exceed 120 days. The authorized enforcement agency may recover all attorneys' fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 22. REMEDIES NOT EXCLUSIVE:

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

SECTION 23. ADOPTION OF ORDINANCE:

This ordinance shall be in full force and effect 90 days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

November 10, 2005

First and Second Reading

Third and Final Reading

Richard Herold, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

This ordinance is required by federal law and is designed to prohibit the illicit discharge of materials other than storm water into the storm drains and water courses throughout the town. It is one part of a number of efforts undertaken to comply with federal regulations relating to the Clean Water Act and to protect our natural resources.

Fiscal Impact:

The Ordinance has a potential fiscal impact of approximately \$3,000.00. This cost would be associated with a public education and awareness campaign to make the public aware of the importance of compliance with the ordinance as well as potential penalties for non-compliance.



Ordinance Number 461

AN ORDINANCE AMENDING THE ZONING MAP OF THE TOWN OF ELSMERE BY RE-ZONING THE PROPERTIES KNOWN AS NUMBER TWO (2) AND NUMBER FOUR (4) TAMARACK AVENUE FROM THE EXISTING ZONING OF R-1 RESIDENTIAL DISTRICT, TO COMMUNITY COMERCIAL DISTRICT, (CC) ZONING.

ADDITIONALLY APPROVING THE ADMINISTRATIVE SUBDIVISION OF TAX PARCEL NUMBERS 19-004-00-311, 19-004-00-312, AND TAX PARCEL NUMBER 19-004-00-313, INTO ONE TAX PARCEL TO BE KNOWN AS TAX PARCEL NUMBER 19-004-00-311.

Prepared By: John Giles, Town Manager

First and Second Reading:

January 12, 2006 Council Meeting:

Results _____ Passed 6 – Yes, 0 – No, 1 – Absent (Councilman Pasquale 6th District)

Third and Final Reading as well as a Public Hearing:

February 09, 2006 Council Meeting:

Results _____

ORDINANCE 461

AN ORDINANCE AMENDING THE ZONING MAP OF THE TOWN OF ELSMERE BY RE-ZONING THE PROPERTIES KNOWN AS NUMBER TWO (2) AND NUMBER FOUR (4) TAMARACK AVENUE FROM THE EXISTING ZONING OF R-1 RESIDENTIAL DISTRICT, TO COMMUNITY COMERCIAL DISTRICT, (CC) ZONING.

ADDITIONALLY APPROVING THE ADMINISTRATIVE SUBDIVISION OF TAX PARCEL NUMBERS 19-004-00-311, 19-004-00-312, AND TAX PARCEL NUMBER 19-004-00-313, INTO ONE TAX PARCEL TO BE KNOWN AS TAX PARCEL NUMBER 19-004-00-311.

WHEREAS, The “Owner” of the properties known as 1208 Kirkwood Highway, number two (2) Tamarack Avenue and number four (4) Tamarack Avenue wishes to have these “Properties” combined into one parcel and to rezone this new parcel to permit a commercial use and;

WHEREAS, The Mayor and Council in keeping with the intent of the Comprehensive Plan of the Town of Elsmere, wish to support the growth of business of our local businesses while encouraging the re-development of structures throughout the town.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

That the Zoning Map of the Town of Elsmere is hereby amended by changing the zoning of Tax Parcel numbers 19-004-00-312 (also known as number (2) Tamarack Avenue) and 19-004-313 (also known as number (4) Tamarack Avenue) from their current R-1, Residential District zoning to CC, Community Commercial District zoning.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

That Tax Parcel 19-004-00-312 (also known as number Two (2) Tamarack Avenue) and Tax Parcel 19-004-313 (also known as number Four (4) Tamarack Avenue), be combined with Tax Parcel 19-004-00-311 (also known as 1208 Kirkwood Highway) to create one Tax Parcel to be known as Tax Parcel 19-004-00-311 (also known as 1208 Kirkwood Highway).

PROVIDED, HOWEVER, that the foregoing is expressly contingent upon the following conditions precedent:

1. Owner's plans for development of the Properties shall be approved by the Town of Elsmere Planning Commission and the Town of Elsmere Board of Adjustment; and

2. Owner, at its expense, shall cause a deed restriction, in form and content acceptable to the Town of Elsmere, to be recorded against the Properties which prohibits any building(s) or other structure(s), other than for surface parking, to be built upon Tax Parcel 19-004-00-312 (also known as number Two (2) Tamarack Avenue) and/or Tax Parcel 19-004-00-313 (also known as number Four (4) Tamarack Avenue).

January 12, 2006
First and Second Reading

Third and Final Reading

Richard Herold, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

This Ordinance re-zones two currently vacant lots known as number 2 and 4 Tamarack Avenue from R-1, Residential zoning to CC, Community Commercial zoning and then combines these lots with the lot known as 1208 Kirkwood Highway to create one large Community Commercial lot to be known as 1208 Kirkwood Highway, subject to certain conditions contained herein.



Ordinance Number 462

**AN ORDINANCE AMENDING THE ZONING AND THE ZONING MAP OF
THE TOWN OF ELSMERE BY RE-ZONING THE FOLLOWING PROPERTIES
KNOWN AS**

**“404 NEW ROAD-TAX PARCEL 1900500071”,
“406 NEW ROAD-TAX PARCEL 1900500070”,
“408 NEW ROAD-TAX PARCEL 1900500069”,
“410 NEW ROAD-TAX PARCEL 1900500068”,
“412 NEW ROAD-TAX PARCEL 1900500068”,
“4 NORTHERN AVENUE-TAX PARCEL 1900500066”, AND
“6 NORTHERN AVENUE-TAX PARCEL 1900500065”,**

TO R-1 RESIDENTIAL DISTRICT ZONING.

Proposed By: 2nd District Councilwoman Pat Frantz

First and Second Reading:

March 09, 2006 Council Meeting:

Results Approved: 6-Yes, 0-No, 1-Absent (Mayor)

Third and Final Reading as well as a Public Hearing:

April 13, 2006 Council Meeting:

Results _____

ORDINANCE 462

AN ORDINANCE AMENDING CHAPTER 225 OF THE CODE OF THE TOWN OF ELSMERE TO UPDATE THE ZONING CODE OF THE TOWN OF ELSMERE.

WHEREAS, the Town of Elsmere has approved a revised Zoning Code that provides for zoning classifications as set forth on the Official Map adopted as part of the Zoning Code;;

WHEREAS, the Official Map designates parcels 404New Road – 1900500071, 406 New Road – 1900500070, 408 New Road – 1900500069, 410 New Road – 1900500068, 412 New Road – 1900500067, 4 Northern avenue – 1900500066 and 6 Northern Avenue – 1900500065 as zoned Community Commercial; and

WHEREAS, the aforesaid tax parcels are in an area that is currently devoted to residential use and that is largely zoned R – 1;

WHEREAS, the Town of Elsmere Comprehensive Plan designates the aforesaid tax parcels as intended for residential use.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

1. The zoning of parcels 404New Road – 1900500071, 406 New Road – 1900500070, 408 New Road – 1900500069, 410 New Road – 1900500068, 412 New Road – 1900500067, 4 Northern avenue – 1900500066 and 6 Northern Avenue – 1900500065 are hereby changed to zone R – 1; and

2. The Official Map of the Zoning Code of the Town of Elsmere shall designate the aforesaid tax parcels referred to in paragraph 1 above as being zoned R-1.

March 03, 2006
First and Second Reading

Third and Final Reading

Richard Herold, Mayor

Joann I. Personti, Secretary

Approved as to form:

EDWARD M. MCNALLY, SOLICITOR

SYNOPSIS

This Ordinance re-zones parcels 404 New Road – 1900500071, 406 New Road – 1900500070, 408 New Road – 1900500069, 410 New Road – 1900500068, 412 New Road – 1900500067, 4 Northern avenue – 1900500066 and 6 Northern Avenue – 1900500065 to R – 1 zoning.

FISCAL IMPACT:

NONE



Ordinance Number 468

AN ORDINANCE AMENDING CHAPTER 225 (ZONING CODE) OF THE CODE OF THE TOWN OF ELSMERE

Proposed By:

First and Second Reading:

June 08, 2006 Council Meeting:

Results: Passed 6 In Favor, 0 Opposed, 1 Absent (4th District Councilman McKewen)

Third and Final Reading as well as a Public Hearing:

July 13, 2006 Council Meeting:

Results: Passed 4 In Favor, 2 Opposed, 1 Absent (4th District Councilman McKewen)

ORDINANCE 468

AN ORDINANCE AMENDING CHAPTER 225 (ZONING CODE) OF THE CODE OF THE TOWN OF ELSMERE

WHEREAS, the Zoning Code of the Town of Elsmere currently permits “garden apartment projects” in a community commercial district, but does not define what constitutes a “garden apartment project”,

WHEREAS, it was not the intention of the Town of Elsmere to permit a single structure to constitute a “garden apartment project”, but

WHEREAS, it appears that prior to June 01, 2006, certain property owners in the Town of Elsmere were advised that a single structure would qualify as a “garden apartment project”,

WHEREAS, permitting some limited residential use of existing structures within the community commercial district would be consistent with the Comprehensive Plan of the Town of Elsmere and

WHEREAS, there is also a need to clarify the status of certain nonconforming uses in the R-1 zoning district.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

1. Section 225-19 of Chapter 225 of the Code of the Town of Elsmere is hereby amended by deleting Section 225-19A(4) and adding Section 225-19C(6) to read as follows:

(6) two-family dwellings

2. Section 225-16 of Chapter 225 of the Code of the Town of Elsmere is hereby amended to add Section 225-16A(4) to read as follows:

- (4) two-family dwelling, provided that such structure was regularly used as a two-family dwelling prior to the enactment of this Ordinance.

3. This Ordinance shall take effect upon enactment and paragraph 1 of this Ordinance shall also apply to any property that was in a community commercial district on or before April 01, 2006, but was rezoned since that date to a different zoning clarification.

June 08, 2006
First and Second Reading

July 13, 2006
Third and Final Reading

Richard Herold, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

This Ordinance,

1. Removes Garden Apartment Projects as a permissible use in a Community Commercial Zoning District.
2. Allows two-family dwellings as a “Special Exception” use in a Community Commercial Zoning District.
3. Grandfathers any two-family dwellings that were located in an existing R-1 Zoning District and regularly used as a two-family dwelling prior to the enactment of this Ordinance.
4. Allows any two-family dwellings that were located in Community Commercial Zoning District prior to April 01, 2006 and for which the zoning of the district was changed, to be permitted as a Special Exception Use.

Fiscal Impact: None



Ordinance Number 469

AN ORDINANCE ADOPTING THE "OFFICIAL ZONING MAP" OF THE TOWN OF ELSMERE

Proposed by: Councilman John Jaremchuk 1st District Councilman

First and Second Reading:

August 10, 2006

Results: Approved 7 – In Favor , 0 - Opposed

Third and Final Reading:

September 14, 2006

Results: _____

Ordinance Number 469

AN ORDINANCE ADDOPTING THE “OFFICIAL ZONING MAP” OF THE TOWN OF ELSMERE

WHEREAS, a number of actions have been taken over the years which have effected the zonings of certain parcels of land throughout the Town; and,

WHEREAS, the Mayor and Council have adopted a Comprehensive Plan which as a major part includes the current and future land use and zoning throughout the Town; and,

WHEREAS, the Mayor and Council have directed the Town’s engineers to review all legislation which has affected zoning throughout the Town and to produce a revised map which accurately reflects those actions.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

That the attached map which was produced by VanDemark & Lynch, Inc. on June 21, 2006 and is identified as VanDemark & Lynch File Number 38348-L, shall hereby be adopted as the official Zoning Map of the Town of Elsmere.

First and Second Reading

Third and Final Reading

Richard Herold, Mayor

Joann I. Personti, Secretary

Approved as to form
Edward McNally, Town Solicitor

SYNOPSIS

This Ordinance officially adopts the Town of Elsmere Zoning Map.

FISCAL IMPACT

There is no fiscal impact in the adoption of this ordinance.



ORDINANCE 488

As Amended

An ordinance amending Chapter 225 (Zoning) of the Code of the Town of Elsmere by adding a new section which regulates the exterior color of Buildings, Accessory Buildings or Dwellings, located in the Community Commercial District.

**Sponsored by: Councilman Thomas S. Novak, Jr., 3rd District Councilman
Councilman Charles McKewen, 4th District Councilman
Councilman John Pasquale, 6th District Councilman**

**First & Second Reading:
February 14, 2008 Council Meeting:**

Results: Passed; 5 – In Favor, 0 – Opposed, 2 – Absent (Third District Councilman Thomas S. Novak, Jr. and Sixth District Councilman John Pasquale.

**Third and Final Reading with Public Comment
March 13, 2008 Council Meeting:**

Results: Passed; 7 – In Favor, 0 – Opposed

ORDINANCE 488

An ordinance amending Chapter 225 (Zoning) of the Code of the Town of Elsmere by adding a new section which regulates the exterior color of Buildings, Accessory Buildings or Dwellings located in the Community Commercial District.

WHEREAS, the Community Commercial District through the Town is often referred to as the Town's main street and is traveled daily by thousands of motorists, many of who's impression of the Town will be based on what they see as they travel through this district; and

WHEREAS, the Mayor and Council wish to maintain a "Main Street USA" concept and appearance throughout the Community Commercial District thereby projecting a positive image of the Town and promoting the Town and all it has to offer while maintaining property values and attracting new businesses and residents; and

WHEREAS, residents have expressed their concerns regarding the unregulated use of colors in the painting of the exterior of certain Buildings in this district and do not believe this is consistent with what the Town's Community Commercial District should be; and

WHEREAS, the Mayor and Council believe in order to protect the appearance of structures within this district and ensure that all Buildings, Accessory Buildings or Dwellings are aesthetically pleasing it must in addition to other regulations, regulate the colors that appear on the exterior, of all Buildings, Accessory Buildings or Dwellings located within the Community Commercial District.

NOW, THEREFORE, be it ordained by the Council of the Town of Elsmere that;

1. Chapter 225, Section 225-19 be amended by adding a new section 225, Section 225-19 E to read as follows.

225, Section 225-19-E Exterior Building, Accessory Building or Dwelling, Color

- a. All exterior surfaces of all Buildings, Accessory Buildings or Dwellings, excluding roofs, shall be properly maintained and protected from the elements by paint or other protective coating applied in a workmanlike fashion. Painted or protective coatings shall be uniform in color without blemishes throughout the exterior and shall be in accordance with the color palette of the Town of Elsmere adopted by resolution. Trim paint shall be uniform in color and in accordance with the adopted color palette of the Town of Elsmere without blemishes.

- b. The owner of any of any Building, Accessory Building or Dwelling affected by this section of the code may apply to the Board of Adjustments for a variance from this regulation. The variance procedure shall be the same as those established or followed for all variance requests. However, a variance requested pursuant to this section which is the first such request for a variance to this section by the current owner of the property, the normal fees charged for a variance request shall be waived.
 - c. The exterior of any Building, Accessory Building or Dwelling which is to be painted or repainted shall be compatible with the official color palette of the Town of Elsmere.
 - d. If any Building, Accessory Building or Dwelling located in the Community Commercial District is secured for more than 30 days, except in the case of a natural disaster, the boards, panels or other means of securing structural openings shall be painted to match the exterior color of the Building, Accessory Building or Dwelling.
 - e. In the case of any property subject to this ordinance for which a variance has not been obtained, at the time the property is painted or other protective coating applied the property shall be made to conform to the provisions of this section. It is the intent of this section that property that is nonconforming shall not continue as nonconforming after it is painted or other coating applied.
2. Chapter 225, Section 225-5 (Definitions) be amended by adding a new definition to read as follows;

BLEMISH - shall mean a noticeable imperfection that impairs appearance.

February 14, 2008
First and Second Reading

March 13, 2008
Third and Final Reading

Richard Herold, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

Ordinance 488

This ordinance amends the zoning code of the Town of Elsmere by regulating the exterior colors of Buildings, Accessory Buildings or Dwellings, located within the Community Commercial District.

FISCAL IMPACT

This Ordinance is an administrative and procedural action and is not anticipated to have any fiscal impact.



ORDINANCE 493

As Amended

An ordinance amending Chapter 225 (Zoning) of the Code of the Town of Elsmere by adding a new section which regulates the exterior color of Buildings, Accessory Buildings or Dwellings, located throughout the entire Town.

Sponsored by: Councilman John Pasquale, 6th District Councilman

**First & Second Reading:
June 12, 2008 Council Meeting:**

Results:

**Third and Final Reading with Public Comment
July 10, 2008 Council Meeting:**

Results:

ORDINANCE 493

An ordinance amending Chapter 225 (Zoning) of the Code of the Town of Elsmere by adding a new section which regulates the exterior color of Buildings, Accessory Buildings or Dwellings throughout the entire town.

WHEREAS, the Mayor and Council adopted an ordinance which regulated the use of colors in the painting of the exterior of certain buildings, accessory buildings or dwellings in the Town's Community Commercial District; and

WHEREAS, residents have expressed a concern to the Mayor and Council that the same regulations should be adopted in all zones throughout the Town in order to protect the appearance of structures and ensure that all Buildings, Accessory Buildings or Dwellings are aesthetically pleasing.

NOW, THEREFORE, be it ordained by the Council of the Town of Elsmere that;

1. Chapter 225, Section 225-8 be amended by adding a new section 225, Section 225-8 T to read as follows.

225, Section 225-8-T Exterior Building, Accessory Building or Dwelling, Color

- a. All exterior surfaces of all Buildings, Accessory Buildings or Dwellings, excluding roofs, shall be properly maintained and protected from the elements by paint or other protective coating applied in a workmanlike fashion. Painted or protective coatings shall be uniform in color without blemishes throughout the exterior and shall be in accordance with the color palette of the Town of Elsmere adopted by resolution. Trim paint shall be uniform in color and in accordance with the adopted color palette of the Town of Elsmere without blemishes.
- b. The owner of any of any Building, Accessory Building or Dwelling affected by this section of the code may apply to the Board of Adjustments for a variance from this regulation. The variance procedure shall be the same as those established or followed for all variance requests. However, a variance requested pursuant to this section which is the first such request for a variance to this section by the current owner of the property, the normal fees charged for a variance request shall be waived.
- c. The exterior of any Building, Accessory Building or Dwelling which is to be painted or repainted shall be compatible with the official color palette of the Town of Elsmere.

- d. If any Building, Accessory Building or Dwelling is secured for more than 30 days, except in the case of a natural disaster, the boards, panels or other means of securing structural openings shall be painted to match the exterior color of the Building, Accessory Building or Dwelling.
- e. In the case of any property subject to this ordinance for which a variance has not been obtained, at the time the property is painted or other protective coating applied the property shall be made to conform to the provisions of this section. It is the intent of this section that a property that is nonconforming shall not continue as nonconforming after it is painted or other coating applied.

June 12, 2008
First and Second Reading

July 10, 2008
Third and Final Reading

Richard Herold, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

Ordinance 488

This ordinance amends the zoning code of the Town of Elsmere by regulating the exterior colors of Buildings, Accessory Buildings or Dwellings, located throughout the entire Town.

FISCAL IMPACT

This Ordinance is an administrative and procedural action and is not anticipated to have any fiscal impact.

March 07, 2007

Director Constance S. Holland
Office of State Planning Coordination
Suite 7, 3rd Floor
Thomas Collins Building
540 S. DuPont Highway
Dover, DE 19901

Re: Town of Elsmere Annual Report:

Dear Ms. Holland:

The Town of Elsmere is pleased to submit its 2006 Annual Report on Comprehensive Plan Implementation. As required in Title 22, Section 702(f) of the Delaware Code, this report describes Elsmere's implementation of its comprehensive plan by summarizing the Town's planning accomplishments, describing current planning activities, and identifying issues that have surfaced since the plan was adopted.

We truly appreciate the help and support we have received from the Office of State Planning Coordination.

Sincerely,

Richard A. Herold, Mayor
Town of Elsmere

Town of Elsmere Comprehensive Plan 2007 Annual Implementation Report

Report Date: March 07, 2007

Date of Plan Certification: August 12, 2004

Opening Statement:

The Town of Elsmere apologizes for the delay in submitting this report. The town was unaware until January 2007 that this report was required. The contents of this report will cover the period of time from September 2004 thru February 2007. Future reports will be submitted in a timely manner.

Section I: Accomplishments:

The following Accomplishments have been made in implementing its comprehensive plan over the report period.

- a. In an attempt to assure that matters presented to the Board of Adjustments comply with not only the Code of the Town of Elsmere, but also the Comprehensive Plan. On October 13, 2004, the Mayor and Council adopted Ordinance 439, which requires all matters submitted to the Board of Adjustments, first be reviewed and commented on by the Planning Commission, whose job it is to assure compliance with the Comprehensive Plan.
- b. On November 10, 2005, the Mayor and Council adopted Ordinance 451, which revised the Zoning Code (Chapter 225) of the Town of Elsmere. This revision assured that the zoning code was in compliance with the Comprehensive Plan.

Section II: Compliance with Title 22, Chapter 7, Section 702, Del Code;

Title 22, Chapter 7, Section 702, Del Code requires that within 18 months of comprehensive plan adoption, lands be rezoned in accordance with the land uses provided for in the comprehensive plan.

On July 13, 2006, the Mayor and Council took the first step in accomplishing this task by adopting Ordinance 468, which addressed two family homes located in a Community Commercial (CC) Zone.

On September 4, 2006, the Mayor and Council officially completed the process by adopting Ordinance 469, which adopted the “Official Zoning Map” of the Town of Elsmere. This newly adopted map complies with the land uses provided for in the comprehensive plan.

This task has been completed.

Section III: Annexation;

The town has not annexed any land into the municipality since the adoption of the comprehensive plan.

Section IV: Plan Corrections or Minor Plan Amendments;

- a. The town has realized that the current plan does not contain sufficient information to plan for or proceed with possible annexation. The Town has contacted the University of Delaware IPA and will be working with that organization to produce a plan amendment concerning annexation which will be submitted at a later date.

Section V: Review of Recommendations and Implementation Items:

Following is the status of the comments made by State agencies during the PLUS 2004-06-07 process as contained in the Office of State Planning Coordination letter dated July 08, 2004.

Comments and Response:

Office of State Planning Coordination - Contact: Herb Inden 577-5188

It should be noted that the Town of Elsmere has not included an annexation plan with in the document; however the Town has included a large "Area of Concern." The Town noted interest in being involved in the planning of these areas.

As stated earlier in this report the town plans to submit an annexation amendment at a later time.

State Historic Preservation Office (SHPO) - Contact: Anne McCleave 739-5685

The State Historic Preservation Office noted that they were happy to read that Elsmere is interested in developing historic preservation objectives and programs, such as the Main Street Program offered by the National Trust for Historic Preservation. As the Town develops its historic preservation program, it should also consider the following:

- The Town should begin by surveying and inventorying its historic resources. There has been some surveys done for a number of properties in Elsmere; however the Town should review those surveys (located in the SHPO office) to gain an understanding of what remains to be completed and updated.

The town has taken no action on this recommendation but will take action prior to December 31, 2007.

- Once the survey is completed and the Town has an understanding of its historic resources, an evaluation should be performed to assess whether there is an eligible historic district or individual properties.

The town has taken no action on this recommendation but will conduct an assessment prior to December 31, 2007.

- With the designation of a historic district and individual historic properties (properties listed in the National Register of Historic Places), the properties become eligible for a number of financial incentives, such as preservation grants and State and federal historic preservation tax credits. The incentives will help towards the preservation and maintenance of buildings and with the establishment of a successful Main Street program.

The town agrees.

- In addition, the Town could develop a historic preservation ordinance, which would allow for the review of projects taking place on historic properties by a historic review board.

The town has taken no action on this recommendation but will consider the need for such an ordinance prior to December 31, 2007.

- The review board meetings could provide a setting for the public to discuss preservation issues and concerns.

The town agrees.

- The ordinance could allow for a Historic zone to be established, providing additional protection and incentives for historic properties and establishing design standards.

The town agrees.

- The Town might also consider developing design standards and guidelines for the Main Street, even if Main Street is not designated as a historic district. Such guidelines would help retain the historic appearance and small town feel that the Town and its residents desire.

The town has taken no action on this recommendation but will consider the need for such standards should an ordinance be introduced.

- The State Historic Preservation Office has noted that they would be happy to assist in any of these steps to help the Town reach its preservation goals.

The town will certainly seek any assistance or guidance the SHPO is available to provide.

Department of Transportation- Contact: Bill Brockenbrough 760-2109

- 1) On page 22, in the section on the Environmental Protections Plan, Recommendation Nine reads "The town should work with DelDOT and the Wilmington Area Planning Council (WILMAPCO) to monitor activity along Kirkwood Highway." It is unclear what this recommendation means. What specifically would DelDOT, WILMAPCO or the Town do?

The town would simply like to be kept aware of plans for the Kirkwood Highway in order to determine what if any impact those plans may have on traffic throughout the town. The town would also like to be assured that both DelDOT and WILMAPCO recognize that some projects while outside of the town may have an impact upon the town.

- 2) In the Transportation section, there is a statement on page 51 that "The town would like to see vehicular speed [on Kirkwood Highway] reduced to 25 miles per hour to improve the pedestrian environment and encourage a main street atmosphere." This statement is followed by Recommendation Five on page 53, "Continue to work with DelDOT to reduce traffic speeds along Kirkwood Highway."

DelDOT noted that they appreciate that the Town would like to have lower speeds on Kirkwood Highway. There are things that could be done to the roadside environment to encourage lower speeds, and if the Town wants to do them they should discuss some specific measures in the Plan. DelDOT would consider implementing these measures as part of a Transportation Enhancement project (See comment 3 below.). However, it may not be possible to attempt to achieve a speed reduction to as low as 25 miles per hour.

The town appreciates this comment and will work with DelDOT to discuss specific actions could be taken to encourage lower speeds even if an official reduction to 25 miles per hour were not possible. The town will initiate discussions with DelDOT concerning this issue prior to December 31, 2007.

- 3) In the Economic Development Plan, Recommendation Two on page 64 is to "Rearrange traffic patterns along Kirkwood Highway to accommodate the new Main Street." The supporting language that follows mentions "collaboration with DelDOT to implement landscaping designs, controlled signage, traffic calming measures, and a reduction in the speed limit along Elsmere's portion of Kirkwood Highway."

DelDOT has addressed speed limit reductions in comment 2 above. Regarding traffic calming, there are things such as bulbouts (bringing the curb out to the edge of the travel lane) that can encourage lower speeds and are often referred to under the general term "traffic calming." However, DelDOT will only consider traffic calming measures that are consistent with the purpose and function of the road. Speed humps (changes in pavement height) or chicanes (obstacles forcing low speed turns) in the travelway are examples of devices that would not be appropriate.

The town acknowledges DelDot's position on this issue and supports it.

One thing that the Plan does not mention is Transportation Enhancement (TE) projects. TE projects are DelDOT projects done to highlight the cultural, aesthetic, and environmental aspects of the transportation system. Much of what the Town seeks in improvements to Kirkwood Highway might be achieved through a TE project. While DelDOT is not prepared to undertake additional projects in 2004 or 2005, they will accept nominations for such projects for 2006. More information on TE projects is available at www.deldot.net/static/Community_programs_services/trans_ahnance/index.html.

The town will pursue any options which may be available to it through Transportation Enhancement Projects.

- 4) In Chapter 1, Public Participation, most of what is presented as public involvement is actually consultation with Town officials. It is recommended that the Town government clarify in the Plan its efforts to obtain input from the town's residents.

The town acknowledges the apparent disinterest of the public in the process and has discussed methods of increasing that involvement such as bringing portable presentations into each neighborhood on evenings and weekends thereby essentially bringing the process to the public instead of asking the public to come to the project. The town is also reviewing methods used by other municipalities and developing a sort of best practices list for future use.

- 5) There could be more in depth analysis of the very well presented information. For example, the Plan mentions that the Town's age profile matches that of the county and the state, but does not say why that is significant. In contrast, the Plan mentions that the town has a much higher percentage of "at-risk" households than the county or the state. This fact would seem to have significant implications with regard to the need for transit and social services, but those implications are not explored.

The town acknowledges and accepts this assessment and will incorporate this additional information into its first update.

**The Department of Natural Resources and Environmental Control - Contact:
Kevin Covle 739-3091**

TMDLs:

It appears that Elsmere has addressed TMDLs in its Comprehensive Plan. One of the recommendations in Chapter 2 addresses trying to achieve the TMDLs through work with the Christina River Partnership. However, the Town may want to put more detailed actions within the recommendation pulling from items listed in the Christina Watershed Restoration Plan.

The town has taken no action on this recommendation but will review the Christiana Watershed Restoration Plan and determine if it would provide the town with the ability to develop more detailed actions. This review will be completed by December 31, 2007.

Stormwater Management and Drainage:

The Town has identified drainage and flooding concerns in the transportation section. Perhaps there could be more emphasis in the re-development section to look for opportunities for drainage improvements as part of the Towns re-development efforts.

In a synopsis of the resident's survey, storm water management has been mentioned as a concern more often than any other issue that residents identified. This should provide some basis for inclusion in the plan for the need for more comprehensive planning for drainage improvements and maintenance.

The town will take both of these recommendations into consideration as it prepares its first update.

Habitat:

A review of our database indicates that there is a record of *Battus philenor* (Pipevine swallowtail) located within Wilmington Marsh adjacent to the Christina River. Impacts to this rare species can be avoided by maintaining a vegetative buffer around the wetland of at least 100ft. Buffers reduce the amount of sediments, pollutants, and other non-point source material that could potentially affect the condition and survivability of organisms that rely on this habitat.

The town appreciates being provided with this information.

Parks, Open Space, and Recreation

According to the Redevelopment Strategies (section 9-2), Recommendation 3 "Utilize and Expand Open Space and Parks" suggests that Elsmere should develop connecting greenway trails. We recommend that a series of stacking trail loops be designed with many access points and connections to adjacent communities. Community trail systems with long continuous trails, perimeter-only trails, and systems with few access points, often go unused and neglected. For trail design/construction specifications, contact Susan Moerschel at (302) 739-5285.

The town appreciates being provided with this information and will contact Susan Moerschel at the appropriate time.

Soils

It would be helpful if this section included additional information and/or maps regarding soils that are inappropriate for development.

The town will take this recommendation into consideration as it prepares its first update.

Re-Greening of Elsmere Program

Implementation of this program will have a positive effect on the aesthetics and environment within Elsmere. There are additional programs available that may help provide funding and guidance for this program including a grant program administered through the Delaware Coastal Programs, "Habitat and Natural Resource Planning, Management and Protection Grants for Delaware's Local Governments and Communities." Additional programs that should be noted include the Delaware Department of Agriculture's Urban Forestry grant program and the New Castle County Conservation District Cost Share Programs.

The town appreciates being provided with this information and plans to take advantage of these programs when appropriate.

Land Use Recommendations

DNREC strongly supports these recommendations. Competitive grant funding for review of zoning and subdivision codes for environmental considerations is available through the Delaware Coastal Programs Habitat and Natural Resource Planning, Management and Protection grant program.

The town appreciates being provided with this information and plans to take advantage of these programs when appropriate.

Department of Agriculture - Contact: Mark Davis 739-4811

It is noted that the Urban and Community Forestry program is currently working with the town to expand and promote urban forestry. In addition, the town is in the works to become a member of the Tree City USA.

Public Service Commission -Contact; Andra Maucher 739-4247

The Town has noted that at this time, there are no intentions to annex; however, if the plan should be changed and the town decide to annex, it should be noted that the Public Service Commission should be contacted when a property is annexed and not within an existing CPCN.

The town appreciates this information.

Delaware State Housing Authority - Contact Karen Horton 739-4263

The State Housing Authority stated that they support the recommendations in the plan In particular,

- Property Maintenance and Housing Code Enforcement

This protects all members a community from those few who allow their properties to deteriorate to substandard conditions. However, the Town should be conscious of relocation issues.

- Review Zoning Code - The DSHA supports changes that encourage additional affordable housing, such as allowing accessory dwelling units as of right, that also encourage social- and economic- integration, and provide life-cycle housing.

Department of Education - Contact Nick Vacirca 739-4658

The DOE noted that school should be considered as a conditional use in all residential areas.

The town will take this recommendation into consideration as it prepares its first update.

This completes our response to the comments made by State agencies during the PLUS 2004-06-07 process as contained in the Office of State Planning Coordination letter dated July 08, 2004.

On behalf of the Town of Elsmere, I respectfully submit this comprehensive plan annual report to the Office of State Planning Coordination. The information contained in the report is correct and complete.

Signature of Mayor

Date

Richard A. Herold
Printed Name of Mayor

* Approved by the Planning Commission at their March 06, 2007, public meeting.

December 5, 2007

Director Constance S. Holland
Office of State Planning Coordination
122 William Penn Street
Suite 301
Dover, DE 19901

Re: Town of Elsmere Annual Report:

Dear Ms. Holland:

The Town of Elsmere is pleased to submit its 2007 Annual Report on Comprehensive Plan Implementation. As required in Title 22, Section 702(f) of the Delaware Code, this report describes Elsmere's implementation of its comprehensive plan by summarizing the Town's planning accomplishments, describing current planning activities, and identifying issues that have surfaced since the plan was adopted.

We truly appreciate the help and support we have received from the Office of State Planning Coordination.

Sincerely,

Richard A. Herold, Mayor
Town of Elsmere

Town of Elsmere Comprehensive Plan 2007 Annual Implementation Report

Report Date: December 04, 2007

Date of Plan Certification: August 12, 2004

Opening Statement:

This report is the second such report filed by the town. The first report updated activities taken by the Town of Elsmere for the period September 2004 thru February 2007. This report updates activities for the period February 2007 through December 2007.

Section I: Accomplishments:

The following accomplishments have been made in implementing its comprehensive plan over the report period.

- a. In an attempt to assure that matters presented to the Board of Adjustments comply with not only the Code of the Town of Elsmere, but also the Comprehensive Plan. On October 13, 2004, the Mayor and Council adopted Ordinance 439, which requires all matters submitted to the Board of Adjustments, first be reviewed and commented on by the Planning Commission, whose job it is to assure compliance with the Comprehensive Plan.
- b. On November 10, 2005, the Mayor and Council adopted Ordinance 451, which revised the Zoning Code (Chapter 225) of the Town of Elsmere. This revision assured that the zoning code was in compliance with the Comprehensive Plan.

Section II: Compliance with Title 22, Chapter 7, Section 702, Del Code;

As reported in the March 07, 2007 report this task was accomplished on September 4, 2006.

Section III: Annexation;

The Town has not annexed any land into the municipality since the adoption of the comprehensive plan.

Section IV: Plan Corrections or Minor Plan Amendments;

- a. No corrections or minor plan amendments have been requested.
- b. The Town has begun preliminary discussions regarding its plans for the process to be undertaken as it plans for a full review and update of its Comprehensive Plan. In preliminary discussions the following items have been identified as areas of concern which the Town wishes to better address in this review process.
 1. Dramatically increase public review and comment.
 2. Include an annexation section in the revised plan.

Section V: Review of Recommendations and Implementation Items;

Following is the status of the comments made by State agencies during the PLUS 2004-06-07 process as contained in the Office of State Planning Coordination letter dated July 08, 2004.

Comments and Response:

Office of State Planning Coordination - Contact: Herb Inden 577-5188

It should be noted that the Town of Elsmere has not included an annexation plan with in the document; however the Town has included a large "Area of Concern." The Town noted interest in being involved in the planning of these areas.

After speaking with Mr. Inden the town has decided that this issue will be address as part of the comprehensive review and update of its Comprehensive Plan. This will be addressed when the Town submits its updated plan for review certification.

State Historic Preservation Office (SHPO) - Contact: Robin Bodo 736-7411

The State Historic Preservation Office noted that they were happy to read that Elsmere is interested in developing historic preservation objectives and programs, such as the Main Street Program offered by the National Trust for Historic Preservation. As the Town develops its historic preservation program, it should also consider the following:

- The Town should begin by surveying and inventorying its historic resources. There has been some surveys done for a number of properties in Elsmere; however the Town should review those surveys (located in the SHPO office) to gain an understanding of what remains to be completed and updated.

The town has spoken with Robin Bodo from the SHPO. The town is scheduled to meet with Ms. Bodo and other staff from the SHPO in January of 2008. At this time the town will review those surveys already located in the SHPO and formulate a plan to complete and update its historic resources.

- Once the survey is completed and the Town has an understanding of its historic resources, an evaluation should be performed to assess whether there is an eligible historic district or individual properties.

Plans to accomplish this will be formulated at the conclusion of the Town's January 2008 meeting with SHPO.

- With the designation of a historic district and individual historic properties (properties listed in the National Register of Historic Places), the properties become eligible for a number of financial incentives, such as preservation grants and State and federal historic preservation tax credits. The incentives will help towards the preservation and maintenance of buildings and with the establishment of a successful Main Street program.

As reported in the March 07, 2007 report the town agrees.

- In addition, the Town could develop a historic preservation ordinance, which would allow for the review of projects taking place on historic properties by a historic review board.

Plans to accomplish this will be formulated at the conclusion of the town's January 2008 meeting with SHPO.

- The review board meetings could provide a setting for the public to discuss preservation issues and concerns.

As reported in the March 07, 2007 report the Town agrees.

- The ordinance could allow for a Historic zone to be established, providing additional protection and incentives for historic properties and establishing design standards.

As reported in the March 07, 2007 report the Town agrees.

- The Town might also consider developing design standards and guidelines for the Main Street, even if Main Street is not designated as a historic district. Such guidelines would help retain the historic appearance and small town feel that the Town and its residents desire.

As reported in the March 07, 2007 report the Town agrees.

- The State Historic Preservation Office has noted that they would be happy to assist in any of these steps to help the Town reach its preservation goals.

The Town has sought the assistance and guidance the SHPO and will meet with SHPO in January 2008.

Department of Transportation- Contact: Bill Brockenbrough 760-2109

- 1) On page 22, in the section on the Environmental Protections Plan, Recommendation Nine reads "The town should work with DelDOT and the Wilmington Area Planning Council (WILMAPCO) to monitor activity along Kirkwood Highway." It is unclear what this recommendation means. What specifically would DelDOT, WILMAPCO or the Town do?

As reported in the March 07, 2007 report the Town would simply like to be kept aware of plans for the Kirkwood Highway in order to determine what if any impact those plans may have on traffic throughout the Town. The Town would also like to be assured that both DelDOT and WILMAPCO recognize that some projects while outside of the Town may have an impact upon the Town. In November of 2007 the Town communicated with WILMAPCO and updated the Town's concerns which were contained in Draft 2007 Regional Progress Report concerning the Town of Elsmere.

- 2) In the Transportation section, there is a statement on page 51 that "The Town would like to see vehicular speed [on Kirkwood Highway] reduced to 25 miles per hour to improve the pedestrian environment and encourage a main street atmosphere." This statement is followed by Recommendation Five on page 53, "Continue to work with DelDOT to reduce traffic speeds along Kirkwood Highway."

DelDOT noted that they appreciate that the Town would like to have lower speeds on Kirkwood Highway. There are things that could be done to the roadside environment to encourage lower speeds, and if the Town wants to do them they should discuss some specific measures in the Plan. DelDOT would consider implementing these measures as part of a Transportation Enhancement project (See comment 3 below.). However, it may not be possible to attempt to achieve a speed reduction to as low as 25 miles per hour.

As reported in the March 07, 2007 report the Town appreciates this comment and will work with DelDOT to discuss specific actions that could be taken to encourage lower speeds even if an official reduction to 25 miles per hour were not possible. The Town has had some preliminary discussions with DelDOT and is not optimistic that a speed reduction will be acceptable to DelDOT. The Town will continue to pursue this and make DelDOT aware of the importance of this issue.

- 3) In the Economic Development Plan, Recommendation Two on page 64 is to "Rearrange traffic patterns along Kirkwood Highway to accommodate the new Main Street." The supporting language that follows mentions "collaboration with DelDOT to implement landscaping designs, controlled signage, traffic calming measures, and a reduction in the speed limit along Elsmere's portion of Kirkwood Highway."

DelDOT has addressed speed limit reductions in comment 2 above. Regarding traffic calming, there are things such as bulbouts (bringing the curb out to the edge of the travel lane) that can encourage lower speeds and are often referred to under the general term "traffic calming." However, DelDOT will only consider traffic calming measures that are consistent with the purpose and function of the road. Speed bumps (changes in pavement height) or chicanes (obstacles forcing low speed turns) in the travelway are examples of devices that would not be appropriate.

As reported in the March 07, 2007 report the Town acknowledges DelDOT's position on this issue and supports it.

One thing that the Plan does not mention is Transportation Enhancement (TE) projects. TE projects are DelDOT projects done to highlight the cultural, aesthetic, and environmental aspects of the transportation system. Much of what the Town seeks in improvements to Kirkwood Highway might be achieved through a TE project. While DelDOT is not prepared to undertake additional projects in 2004 or 2005, they will accept nominations for such projects for 2006. More information on TE projects is available at www.deldot.net/static/Community_programs_services/transportation_enhancement/index.html.

The Town continues to pursue options which may be available to it through Transportation Enhancement Projects. The Town has undertaken a beautification project on the median strips along Kirkwood Highway. The Town is very pleased with the result of this effort and receives continuous positive comments from the motoring public including those who do not reside within the Town.

- 4) In Chapter 1, Public Participation, most of what is presented as public involvement is actually consultation with Town officials. It is recommended that the Town government clarify in the Plan its efforts to obtain input from the Town's residents.

As reported in the March 07, 2007 report the Town acknowledges the apparent disinterest of the public in the process and has discussed methods of increasing that involvement such as bringing portable presentations into each neighborhood on evenings and weekends thereby essentially bringing the process to the public instead of asking the public to come to the project. The Town is also reviewing methods used by other municipalities and developing a sort of best practices list for future use.

- 5) There could be more in depth analysis of the very well presented information. For example, the Plan mentions that the Town's age profile matches that of the county and the state, but does not say why that is significant. In contrast, the Plan mentions that the Town has a much higher percentage of "at-risk" households than the county or the state. This fact would seem to have significant implications with regard to the need for transit and social services, but those implications are not explored.

As reported in the March 07, 2007 report the Town acknowledges and accepts this assessment and will incorporate this additional information into its first update.

**The Department of Natural Resources and Environmental Control - Contact:
Kevin Covle 739-3091**

TMDLs:

It appears that Elsmere has addressed TMDLs in its Comprehensive Plan. One of the recommendations in Chapter 2 addresses trying to achieve the TMDLs through work with the Christina River Partnership. However, the Town may want to put more detailed actions within the recommendation pulling from items listed in the Christina Watershed Restoration Plan.

The Town has conducted a preliminary review of the Christiana Watershed Restoration Plan and determined that the Town could include more detailed actions into its revision of the Comprehensive Plan. This comment will be addressed in the Town's first revision of its comprehensive plan.

Stormwater Management and Drainage

The Town has identified drainage and flooding concerns in the transportation section. Perhaps there could be more emphasis in the re-development section to look for opportunities for drainage improvements as part of the Town's re-development efforts.

In a synopsis of the resident's survey, storm water management has been mentioned as a concern more often than any other issue that residents identified. This should provide some basis for inclusion in the plan for the need for more comprehensive planning for drainage improvements and maintenance.

During this reporting period work has been completed on the Little Mill Creek project which is expected to significantly reduce the number of flooding events which occur within the Town. A comprehensive drainage study has been completed which identifies areas of concern and deficiencies in infrastructure. This report also suggests corrective action and projected cost. The Town will use this report to develop more comprehensive planning for drainage improvements and maintenance which will be included in the Town's first revision of its comprehensive plan.

Habitat

A review of our database indicates that there is a record of *Battus philenor* (Pipevine swallowtail) located within Wilmington Marsh adjacent to the Christina River. Impacts to this rare species can be avoided by maintaining a vegetative buffer around the wetland of at least 100 ft. Buffers reduce the amount of sediments, pollutants, and other non-point source material that could potentially affect the condition and survivability of organisms that rely on this habitat.

As reported in the March 07, 2007 report the Town appreciates being provided with this information.

Parks, Open Space, and Recreation

According to the Redevelopment Strategies (section 9-2), Recommendation 3 "Utilize and Expand Open Space and Parks" suggests that Elsmere should develop connecting greenway trails. We recommend that a series of stacking trail loops be designed with many access points and connections to adjacent communities. Community trail systems with long continuous trails, perimeter-only trails, and systems with few access points, often go unused and neglected. For trail design/construction specifications, contact Susan Moerschel at (302) 739-5285.

Through a cooperative effort with the Town, DNREC, DelDOT and State Elected Officials the Town has recently acquired a piece of land for use as a parkland which was formerly the site of a Delmarva Power and Light electrical sub-station. This completes the Town's plans for the acquisition of parkland. The Town will now begin examining opportunities to develop connecting greenway trails designed with many access points and connections to adjacent communities. The Town appreciates being provided with this information and will contact Susan Moerschel at the appropriate time.

Soils

It would be helpful if this section included additional information and/or maps regarding soils that are inappropriate for development.

As reported in the March 07, 2007 report the Town will take this recommendation into consideration as it prepares its first update.

Re-Greening of Elsmere Program

Implementation of this program will have a positive effect on the aesthetics and environment within Elsmere. There are additional programs available that may help provide funding and guidance for this program including a grant program administered through the Delaware Coastal Programs, "Habitat and Natural Resource Planning, Management and Protection Grants for Delaware's Local Governments and Communities." Additional programs that should be noted include the Delaware Department of Agriculture's Urban Forestry grant program and the New Castle County Conservation District Cost Share Programs.

As reported in the March 07, 2007 report the Town appreciates being provided with this information and plans to take advantage of these programs when appropriate.

Land Use Recommendations

DNREC strongly supports these recommendations. Competitive grant funding for review of zoning and subdivision codes for environmental considerations is available through the Delaware Coastal Programs Habitat and Natural Resource Planning, Management and Protection grant program.

As reported in the March 07, 2007 report the Town appreciates being provided with this information and plans to take advantage of these programs when appropriate.

Department of Agriculture - Contact: Mark Davis 739-4811

It is noted that the Urban and Community Forestry program is currently working with the Town to expand and promote urban forestry. In addition, the Town is in the works to become a member of the Tree City USA.

The Town is currently in the re-certification process to retain its certification as a Tree City USA. The Urban Forestry Program is currently updating the Town's tree inventory.

Public Service Commission -Contact: Andra Maucher 739-4247

The Town has noted that at this time, there are no intentions to annex; however, if the plan should be changed and the Town decide to annex, it should be noted that the Public Service Commission should be contacted when a property is annexed and not within an existing CPCN.

As reported in the March 07, 2007 report the Town appreciates this information.

Delaware State Housing Authority - Contact Karen Horton 739-4263

The State Housing Authority stated that they support the recommendations in the plan. In particular,

- Property Maintenance and Housing Code Enforcement
This protects all members of a community from those few who allow their properties to deteriorate to substandard conditions. However, the Town should be conscious of relocation issues.
- Review Zoning Code - The DSHA supports changes that encourage additional affordable housing, such as allowing accessory dwelling units as of right, that also encourage social- and economic- integration, and provide life-cycle housing.

Department of Education - Contact Nick Vacirca 739-4658

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